

(28,993)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 443.

C. B. GILES, JOHN JANCS, I. FIEGEL, ET AL., PETITIONERS,

vs.

HENRY VETTE, PETER M. ZUNCKER, THEODORE
REGENSTEINER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	Original.	Print.
Proceedings in U. S. circuit court of appeals.....	1	1
Original petition to review and revise.....	1	1
Exhibit A to Original Petition—Limited partnership agree- ment between Ben. Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn, April 2, 1917.....	26	20
Exhibit B to Original Petition—Trust agreement between Frank A. Hecht and Joseph M. Finn, June 30, 1917.....	33	26
Exhibit C to Original Petition—Transcript of proceedings in U. S. district court for the northern district of Illinois....	43	33
Creditors' petition for adjudication.....	43	33
Order of March 12, 1920, granting leave to Fred Meyer, E. H. Allen, and Nathan Jacobs to file intervening petition and to become copetitioners.....	46	35
Intervening petition of Fred Meyer, E. H. Allen, and Nathan Jacobs.....	47	36
Notice of presentation of petition for the appointment of a receiver, etc.....	52	39
Order of March 12, 1920, appointing the Central Trust Company of Illinois receiver, etc.....	53	39

	Original.	Print.
Order of March 12, 1920, approving appearance bond of the Central Trust Co. of Ill. as receiver.....	53	40
Receiver's bond.....	54	40
Appearance of Foreman & Blumrosen as attorneys for receiver	56	41
Petition of Harold Lachman praying for an order directing receiver to take certain assets.....	57	42
Exhibit A to Petition of Harold Lachman—Limited partnership agreement between Ben Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn, April 2, 1917.....	60	44
Order of March 15, 1920, ruling that Ben Marcuse, Lew H. Morris, Joseph M. Finn, and Frank A. Hecht show cause why they should not deliver to the receiver certain property, etc.....	72	48
Notice of motion for leave to file an amended intervening petition making Frank A. Hecht and Joseph M. Finn parties to proceeding, etc.....	73	48
Order of March 16, 1920, granting leave to file supplemental amended intervening petition.....	74	49
Supplemental and amended intervening petition of Fred Meyer et al.....	75	49
Order of March 16, 1920, directing Ben Marcuse, Lew H. Morris, Joseph M. Finn, and Frank A. Hecht to appear before the referee.....	79	53
Appearance of Messrs. Rosenthal, Hamill & Wormser..	80	53
Answer of William Oscar Frazee, a creditor, to petition for adjudication.....	81	54
Appearance of Messrs. Stein, Meyer & David.....	83	55
Answer of Frank A. Hecht to petition of Harold Lachman and rule to show cause, etc.....	84	56
Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920	87	58
Answer of Joseph M. Finn to petition of Harold Lachman and rule to show cause, etc.....	93	62
Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920	96	64
Appearance of Messrs. W. Knox Haynes and Michael Feinberg	102	68
Answer of Lew H. Morris to rule to show cause, etc...	102	68
Answer of Bruno Benjamin Marcuse to petition of Harold Lachman.....	103	69
Order of March 19, 1920, directing the clerk of the court to receive tender of \$46,000.00.....	105	70
Order of March 19, 1920, setting the original petition for adjudication, the intervening petition, the supplemental and amended intervening petition, and the answers thereto for hearing.....	106	71

INDEX.

iii

	Original.	Print.
Answer of Frank A. Hecht to petition for adjudication.	106	71
Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920.	110	74
Answer of Joseph M. Finn to petition for adjudication.	116	78
Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920.	120	80
Order of March 23, 1920, extending time of Lew M. Morris and Ben Marcuse to answer the petition for adjudication	126	84
Answer of Joseph M. Finn to intervening petition of Fred Meyer et al. as amended.....	127	85
Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920	130	87
Answer of Frank A. Hecht to intervening petition of Fred Meyer et al. as amended.....	137	91
Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920	140	94
Order of March 25, 1920, that Ben Marcuse have until March 31, 1920, within which to answer the amended and supplemental intervening petition.....	147	98
Subpœna to alleged bankrupt, issued March 12, 1920... Marshal's return.....	147	98
	148	99
Subpœna to alleged bankrupt, issued March 16, 1920... Marshal's return.....	149	100
	149	100
Order of March 29, 1920, continuing further examination of witnesses for discovery of assets.....	151	101
Hearing of March 29, 1920.....	151	101
Order of March 29, 1920, extending time of Ben Marcuse and Lew H. Morris to answer petition for adjudication	151	101
Order of April 1, 1920, that cause be set down for examination of witnesses.....	152	102
Order of April 1, 1920, giving leave to Joseph M. Finn to file an amended answer, in nature of a cross-petition, to intervening petition of C. B. Giles et al., etc.	152	102
Amendment to answer of Joseph M. Finn to petition of Fred Meyer et al.....	153	102
Amendment to answer of Joseph M. Finn to petition of C. B. Giles et al.....	158	106
Amendment to answer of Joseph M. Finn to petition of Harold Lachman.....	163	110
Withdrawal of appearance of Foreman & Blumrosen as attorneys for the receiver.....	168	113
Response of Clement Studebaker, Jr., and George M. Studebaker to amendment to answer of Joseph M. Finn to petition of Harold Lachman.....	169	114
Exhibit "A"—Limited partnership agreement made April 2, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn....	175	118

INDEX.

	Original.	Print.
Exhibit "B"—Trust agreement made June 30, 1917, by and between Frank A. Hecht and Joseph M. Finn	183	118
Exhibit "C"—Trust certificate No. 3 issued to Richard Yates Hoffman June 30, 1917, for 100 shares in the Hecht-Finn trust.....	191	119
Response of Clement Studebaker, Jr., and George M. Studebaker to the amendment to answer of Joseph M. Finn to petition of Fred Meyer et al. as amended.	193	120
Exhibit "A"—Limited partnership agreement (re- ferred to).....	199	125
Exhibit "B"—Trust agreement (referred to).....	199	125
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	199	125
Response of Clement Studebaker, Jr., and George M. Studebaker to the amendment to answer of Joseph M. Finn to petition of C. B. Giles et al.....	200	126
Exhibit "A"—Limited partnership agreement (re- ferred to).....	206	130
Exhibit "B"—Trust agreement (referred to).....	206	131
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	207	131
Response of Richard Yates Hoffman to amendment to answer of Joseph M. Finn to petition of C. B. Giles et al.....	208	131
Exhibit "A"—Limited partnership agreement (re- ferred to).....	213	135
Exhibit "B"—Trust agreement (referred to).....	213	135
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	214	136
Response of Richard Yates Hoffman to amendment to answer of Joseph M. Finn to petition of Fred Meyer et al. as amended.....	215	136
Exhibit "A"—Limited partnership agreement (re- ferred to).....	220	140
Exhibit "B"—Trust agreement (referred to).....	220	140
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	221	140
Response of Richard Yates Hoffman to amendment to answer of Joseph M. Finn to petition of Harold Lachman	222	141
Exhibit "A"—Limited partnership agreement (re- ferred to).....	227	145
Exhibit "B"—Trust agreement (referred to).....	227	145
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	228	145
Response of Henry Vette to amendment to answer of Joseph M. Finn to petition of C. B. Giles et al.....	229	146
Exhibit "A"—Limited partnership agreement (re- ferred to).....	233	149
Exhibit "B"—Trust agreement (referred to).....	233	149

INDEX.

v

	Original.	Print.
Exhibit "C"—Trust certificate No. 5 issued to Henry Vette for 60 shares in the Hecht-Finn trust	234	149
Response of Henry Vette to amendment to answer of Joseph M. Finn to petition of Harold Lachman.....	235	150
Exhibit "A"—Limited partnership agreement (referred to).....	241	154
Exhibit "B"—Trust agreement (referred to).....	241	154
Exhibit "C"—Trust certificate issued to Henry Vette (referred to).....	241	155
Response of Henry Vette to amendment to answer of Joseph M. Finn to petition of Fred Meyer et al. as amended	242	155
Exhibit "A"—Limited partnership agreement (referred to).....	246	158
Exhibit "B"—Trust agreement (referred to).....	246	158
Exhibit "C"—Trust certificate issued to Henry Vette (referred to).....	247	159
Response of Peter M. Zuncker to amendment to answer of Joseph M. Finn to petition of Fred Meyer et al. as amended	247	159
Exhibit "A"—Limited partnership agreement (referred to).....	252	162
Exhibit "B"—Trust agreement (referred to).....	252	162
Exhibit "C"—Trust certificate No. 6 issued to Peter M. Zuncker for 50 shares in the Hecht-Finn trust	252	163
Response of Peter M. Zuncker to amendment to answer of Joseph M. Finn to petition of C. B. Giles et al. . .	254	164
Exhibit "A"—Limited partnership agreement (referred to).....	258	167
Exhibit "B"—Trust agreement (referred to).....	258	167
Exhibit "C"—Trust certificate issued to Peter M. Zuncker (referred to).....	259	167
Response of Peter M. Zuncker to amendment to answer of Joseph M. Finn to petition of Harold Lachman..	259	168
Exhibit "A"—Limited partnership agreement (referred to).....	264	171
Exhibit "B"—Trust agreement (referred to).....	264	171
Exhibit "C"—Trust certificate issued to Peter M. Zuncker (referred to).....	264	171
Response of Theodore Regensteiner to amendment to answer of Joseph M. Finn to petition of Harold Lachman	265	172
Exhibit "A"—Limited partnership agreement (referred to).....	269	175
Exhibit "B"—Trust agreement (referred to).....	269	175
Exhibit "C"—Trust certificate No. 8 issued to Theodore Regensteiner for 37 shares in the Hecht-Finn trust.....	270	176

INDEX.

	Original.	Print.
Exhibit "D"—Trust certificate No. 7 issued to Israel Grollman for 20 shares in the Hecht-Finn trust.....	271	177
Order of April 14, 1920, re answer of Theodore Regensteiner.....	272	178
Petition of I. Feigel that original petition stand, etc...	273	178
Order of April 14, 1920, granting leave to Messrs. Jacobsen, Bays & Thompkins to enter appearance..	274	179
Appearance and substitution of attorneys for I. Feigel.	274	179
Notice of request for hearing on petition of Harold Lachman, etc.....	275	180
Order of April 14, 1920, setting date for hearing of original petition for adjudication, etc.....	277	181
Subpœna to Clement Studebaker and George M. Studebaker, issued April 1, 1920.....	277	181
Marshal's return.....	278	182
Subpœna to Richard Yates Hoffman et al., issued April 1, 1920, and marshal's return.....	278	182
Order of April 29, 1920, granting leave to I. Feigel to file an amended petition for adjudication, etc.....	279	183
Order of April 30, 1920, vacating order of April 29, 1920, granting leave to I. Feigel to file an amended petition for adjudication.....	280	183
Order of April 30, 1920, granting leave to file an amended petition for adjudication instantner.....	281	184
Amended petition for adjudication.....	281	184
Order of April 30, 1920, to show cause why petition for adjudication should not be granted, etc.....	285	187
Order of May 1, 1920, specially referring cause to Referee Frank L. Wean for examination of all bankrupts, etc.....	286	187
Appearance of Messrs. Rosenthal, Hamill & Wormser.	286	188
Subpœna to alleged bankrupt, issued April 30, 1920...	287	188
Marshal's return.....	287	189
Answer of George M. Studebaker to amended petition for adjudication.....	289	189
Exhibit "A"—Limited partnership agreement (referred to).....	295	194
Exhibit "B"—Trust agreement (referred to).....	295	194
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	296	195
Answer of Clement Studebaker, Jr., to amended petition for adjudication.....	297	195
Exhibit "A"—Limited partnership agreement (referred to).....	303	200
Exhibit "B"—Trust agreement (referred to).....	303	200
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	304	200
Answer of Henry Vette to amended petition for adjudication	304	201

INDEX.

vii

	Original.	Print.
Exhibit "A"—Limited partnership agreement (referred to).....	300	204
Exhibit "B"—Trust agreement (referred to).....	301	205
Exhibit "C"—Trust certificate issued to Peter M. Zuncker (referred to).....	310	205
Answer of Richard Yates Hoffman to amended petition for adjudication, etc.....	310	205
Exhibit "A"—Limited partnership agreement (referred to).....	316	210
Exhibit "B"—Trust agreement (referred to).....	316	210
Exhibit "C"—Trust certificate issued to Richard Yates Hoffman (referred to).....	316	210
Answer of Theodore Regensteiner to amended petition for adjudication, etc.....	317	210
Exhibit "A"—Limited partnership agreement (referred to).....	322	214
Exhibit "B"—Trust agreement (referred to).....	322	214
Exhibit "C"—Trust certificate issued to Theodore Regensteiner (referred to).....	322	214
Exhibit "D"—Trust certificate issued to Israel Grollman (referred to).....	323	215
Answer of Peter M. Zuncker to amended petition for adjudication, etc.....	323	215
Exhibit "A"—Limited partnership agreement (referred to).....	328	219
Exhibit "B"—Trust agreement (referred to)....	328	219
Exhibit "C"—Trust certificate issued to Henry Vette (referred to).....	329	219
Order of May 10, 1920, re answers of Frank A. Hecht and Joseph M. Finn to original petition, etc.....	329	219
Order of May 10, 1920, continuing hearing on amended petition for adjudication and answers thereto.....	330	220
Order of May 11, 1920, extending time for Ben Marcuse and Lew H. Morris to file answers, etc.....	330	220
Order continuing hearing on amended petition for adjudication and answers thereto.....	330	220
Order of May 17, 1920, granting leave to defendants to reopen cause for introduction of documentary evidence, etc.....	331	221
Withdrawal and substitution of attorneys for Frank A. Hecht	332	222
Order of July 1, 1920, referring cause to Referee Wean for hearing on assets and liabilities up to March 11, 1920, etc.....	333	222
Order of August 6, 1920, granting leave to Henry Vette et al. to file a certificate of evidence.....	333	223
Certificate of evidence.....	334	223
Testimony of Emil O. Engstrom.....	335	224
Testimony of Joseph M. Finn.....	337	226

INDEX.

	Original.	Print.
Petitioners' Exhibit No. 1—Partnership agreement, made April 2, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn, and Theodore Regensteiner	340	228
Petitioners' Exhibit No. 2—Certificate of limited partnership, made April 2, 1917, by Ben Marcuse et al.....	349	235
Petitioners' Exhibit No. 3—Partnership agreement, made April 2, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn.....	353	238
Petitioners' Exhibit No. 4—Certificate of limited partnership, dated April 2, 1917, and signed by Ben Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn.....	361	239
Petitioners' Exhibit No. 5—Certified copy of certificate of limited partnership, dated April 2, 1917, and signed by Ben Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn, filed in office of county clerk of Cook County on July 2, 1917.....	365	242
Petitioners' Exhibit No. 6—Trust agreement, made June 30, 1917, by and between Frank A. Hecht and Joseph M. Finn.....	367	244
Exhibit A—Partnership agreement, made April 2, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, and Joseph M. Finn.....	376	244
Petitioners' Exhibit No. 7—Check of Joseph M. Finn to Marcuse & Co. for \$31,500.00, dated June 30, 1917.....	386	247
Petitioners' Exhibit No. 8—Check of Henry Vette to Frank A. Hecht and Jos. Finn for \$30,000.00, dated June 30, 1917.....	388	248
Petitioners' Exhibit No. 9—Check of P. M. Zuncker to Frank A. Hecht and Jos. Finn for \$25,000.00, dated June 30, 1917.....	389	249
Petitioners' Exhibit No. 10—Check of Studebaker Bros. trust to Richard Yates Hoffman for \$50,000.00, dated June 30, 1917.....	390	250
Petitioners' Exhibit No. 11—Check of F. A. Hecht to Marcuse & Co. for \$25,000.00, dated June 30, 1917.....	392	251
Petitioners' Exhibit No. 12—Check of Ben Marcuse to Marcuse & Co. for \$60,000.00, dated June 30, 1917.....	393	252
Petitioners' Exhibit No. 13—Trust certificate No. 1 issued to Frank A. Hecht for 50 shares in the Hecht-Finn trust.....	395	254

INDEX.

ix

	Original.	Print.
Petitioners' Exhibit No. 14—Trust certificate No. 6 issued to Peter M. Zuncker for 50 shares in the Hecht-Finn trust.....	397	255
Petitioners' Exhibit No. 15—Telegram, dated May 8, 1917—George W. Ely to Bruno Benjamin Marcuse.....	405	262
Zuncker's Exhibit No. 1—Partnership agreement, made April 2, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn, and Theodore Regensteiner	413	269
Zuncker's Exhibit No. 2—Partnership agreement (same as Zuncker Exhibit 1).....	421	275
Zuncker's Exhibit No. 3—Partnership agreement (same as Zuncker Exhibit 1).....	429	281
Zuncker's Exhibit No. 4—Partnership agreement (same as Zuncker Exhibit 1).....	437	287
Zuncker's Exhibit No. 5—Partnership agreement (same as Zuncker Exhibit 1).....	445	294
Zuncker's Exhibit No. 6—Partnership agreement (same as Zuncker Exhibit 1).....	453	300
Zuncker's Exhibit No. 7—Partnership agreement (same as Zuncker Exhibit 1).....	461	306
Zuncker's Exhibit No. 8—Partnership agreement (same as Zuncker Exhibit 1).....	469	312
Zuncker's Exhibit No. 9—Letter, dated April 3, 1917, Milton J. Foreman to Joseph M. Finn	478	318
Zuncker's Exhibit No. 10—Letter, dated April 3, 1917, Milton J. Foreman to Frank A. Hecht	480	320
Zuncker's Exhibit No. 11—Letter, dated April 3, 1917, Milton J. Foreman to L. H. Morris..	482	321
Zuncker's Exhibit No. 12—Letter, dated April 13, 1917, Milton J. Foreman to Peter M. Zuncker	483	322
Zuncker's Exhibit No. 13—Letter, dated April 3, 1917, Milton J. Foreman to Henry Vette..	484	323
Zuncker's Exhibit No. 14—Letter, dated April 3, 1917, Milton J. Foreman to Theodore Regensteiner	485	323
Zuncker's Exhibit No. 15—Letter, dated April 3, 1917, Milton J. Foreman to Ben Marcuse	486	324
Zuncker's Exhibit No. 16—Letter, dated April 3, 1917, Milton J. Foreman to Richard Yates Hoffman	487	325
Petitioners' Exhibit No. 16—Trust certificate No. 2 issued to Joseph M. Finn for 63 shares in the Hecht-Finn trust.....	498	334

INDEX.

	Original.	Print.
Testimony of Emil O. Engstrom (recalled).....	503	338
Petitioners' Exhibit No. 17—Check of Regen- steiner Colortype Co. to Joseph M. Finn and Frank A. Hecht, trustees, for \$28,500.00, dated June 30, 1917.....	507	341
Petitioners' Exhibit No. 18—Deposit slip of State Bank of Chicago for account of Mar- cuse & Co., dated July 2, 1917.....	514	347
Petitioners' Exhibit No. 19—Notice of forma- tion of copartnership of Marcuse & Co., dated July 3, 1917.....	516	348
Petitioners' Exhibit No. 20—Frank A. Hecht account with Continental & Commercial Nat. Bank showing balance on hand June 29, June 30, and July 3, 1917.....	532	363
Petitioners' Exhibit No. 21—Deposit slip of State Bank of Chicago for account of Mar- cuse & Co., dated July 3, 1917.....	533	363
Petitioners' Exhibit No. 22—Deposit slip of State Bank of Chicago for account of Mar- cuse & Co., dated July 31, 1917.....	534	364
Testimony of P. M. Zuncker.....	542	371
Petitioners' Exhibit No. 23—Partnership agree- ment, made April 2, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn, and Theodore Regensteiner	564	390
Petitioners' Exhibit No. 24—Certificate of lim- ited partnership signed by Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn, and Theodore Regensteiner, dated April 2, 1917.....	572	390
Order of June 13, 1917, dismissing peti- tion for adjudication in re Fritz Von Frantzius and Ben Marcuse, copart- ners, trading as Von Frantzius & Co., bankrupt	600	414
Testimony of Emery Iliff.....	600	414
Theodore Regensteiner.....	621	432
Louis Grollman.....	623	434
Theodore Regensteiner (recalled)...	623	434
Leo F. Wormser.....	629	439
Benjamin Marcuse.....	631	441
Petitioners' Exhibit No. 26—Trust certificate issued by Benjamin Marcuse, dated Febru- ary 1, 1917.....	639	474

	Original.	Print.
Petitioners' Exhibit No. 27—Certified copy of petition of Charles A. MacDonald and Gustave F. Fischer with copy of proposal attached thereto, filed in probate court of Cook Co., Ill., May 28, 1917.....	673	478
Petitioners' Exhibit No. 28—Certified copy of order entered May 28, 1917, in probate court of Cook Co., Ill., in the matter of the estate of Frederick W. Von Frantzius, deceased...	679	482
Petitioners' Exhibit No. 29—Certified copy of order entered June 15, 1917, in probate court of Cook Co., Ill., in the matter of the estate of Frederick W. Von Frantzius, deceased..	681	484
Petitioners' Exhibit No. 30—Certified copy of order entered July 14, 1917, in probate court of Cook Co., Ill., in the matter of the estate of Frederick W. Von Frantzius, deceased...	683	485
Petitioners' Exhibit No. 31—Certified copy of order entered July 23, 1917, in probate court of Cook Co., Ill., in the matter of the estate of Frederick W. Von Frantzius, deceased..	685	487
Petitioners' Exhibit No. 29A—Letter, dated November 1, 1919, C. A. MacDonald Co. to Marcuse & Co.....	711	509
Exhibit "A"—Balance sheet of Marcuse & Co., September 30, 1917.....	713	510
Exhibit "B"—Profit and loss statement of Marcuse & Co. for 3 months ending September 30, 1917.....	714	511
Exhibit "C"—Commodity trades open—Marcuse & Co., September 30, 1917....	714	511
Exhibit "D"—Comments—Marcuse & Co., September 30, 1917.....	715	512
Statement of cash in office of Marcuse & Co. at close of business September 30, 1917	715	512
Statement of cash in banks.....	716	513
Statement of accounts receivable—customers' and correspondents'.....	717	514
Statement of accounts receivable—sundries	717	514
Statement of notes receivable.....	717	514
Statement of memberships (book value)..	717	514
Statement of accounts payable—correspondents	718	515
Statement of accounts payable—sundries, unpaid bills.....	718	515
Statement of notes payable.....	719	515

INDEX.

	Original.	Print.
Petitioners' Exhibit No. 30A—Check of Marcuse & Co. to Joseph M. Finn for \$1,000.00, dated January 18, 1919.....	723	519
Petitioners' Exhibit No. 31A—Check of Marcuse & Co. to Theodore Regensteiner for \$740.00, dated January 18, 1919.....	724	520
Petitioners' Exhibit No. 32—Check of Marcuse & Co. to I. Grollman for \$400.00, dated January 18, 1919.....	725	520
Petitioners' Exhibit No. 33—Statement of Foreman Bros. Banking Co. in account with P. M. Zuncker, showing balance of July 3, 1917	727	522
Petitioners' Exhibit No. 34—Publication made in the Chicago Daily Law Bulletin, August 6, 1917, of the certification of the copartnership	730	525
Zuncker Exhibit 33—Card of Marcuse & Co..	734	528
Zuncker Exhibit 34—Letterhead of Marcuse & Co.	734	528
Petitioners' Exhibit 35—Dividend distribution of Marcuse & Co., January 1, 1919.....	738	531
Zuncker Exhibit 35—Check of Marcuse & Co. to Frank G. Gardner for \$2,000.00, dated January 17, 1919.....	739	532
Testimony of Scott Brown.....	740	532
Sigismund David.....	744	535
Milton J. Foreman.....	747	538
George T. Buckingham.....	761	550
Zuncker Exhibit 36—Draft of trust agreement.	767	554
Zuncker Exhibit 37—Draft of trust agreement.	773	559
Zuncker Exhibit 38—Draft of agreement.....	781	565
Hecht Exhibit 1—Trust agreement creating Studebaker Bros. trust, dated March 1, 1916.	795	576
Testimony of Emil O. Engstrom (recalled).....	825	600
David Blumrosen.....	826	601
Henry J. Tansley.....	829	604
Zuncker Exhibit 39—Trust certificate No. 4 issued to Theodore Regensteiner for 51 shares in the Hecht-Finn trust.....	831	605
Zuncker Exhibit 40—Trust certificate No. 8 issued to Theodore Regensteiner for 37 shares in the Hecht-Finn trust.....	832	607
Zuncker Exhibit 41—Trust certificate No. 7 issued to Israel Grollman for 20 shares in the Hecht-Finn trust.....	834	608
Zuncker Exhibit 42—Trust certificate No. 9 issued to Richard Yates Hoffman for 100 shares in the Hecht-Finn trust.....	835	609

INDEX.

xiii

Original. Print.

Zuncker Exhibit 43—Assignment by Richard Yates Hoffman of 100 shares in the Hecht-Finn trust to Frank G. Gardner.....	837	610
Zuncker Exhibit 44—Trust certificate No. 9 issued to Frank G. Gardner for 100 shares in the Hecht-Finn trust.....	837	611
Testimony of Egbert Robertson.....	840	613
Richard Yates Hoffman.....	867	636
Louis Grollman (recalled).....	880	646
Richard Yates Hoffman (recalled).....	885	650
Petitioners' Exhibit 30—Statement of account of P. M. Zuncker with Marcuse & Co. for January, 1918.....	887	652
Testimony of Joseph M. Finn.....	889	654
Finn Exhibit 1—Instrument of tender and renunciation of Frank A. Hecht and Joseph M. Finn, dated March 17, 1920.....	890	654
Testimony of Russell Platt.....	895	658
Hecht Exhibits 2, 3, 4, and 5 offered in evidence	901	662
Hecht Exhibit 2—Agreement between Ben Marcuse and Henry Vette, dated March 28, 1917	904	665
Hecht Exhibit 3—Agreement between Ben Marcuse and Peter M. Zuncker, dated March 28, 1917.....	906	666
Hecht Exhibit 4—Agreement between Ben Marcuse and Peter M. Zuncker, dated July 1, 1917.....	907	667
Hecht Exhibit 5—Agreement between Ben Marcuse and Henry Vette, dated July 1, 1917	909	668
Testimony of Richard Yates Hoffman (examined by the court).....	911	670
Testimony of Joseph M. Finn (examined by the court)	932	687
Statement by the court.....	933	689
Colloquy between court and counsel.....	937	691
Judge's certificate.....	945	698
Notice of præcipe for transcript.....	947	699
Præcipe for transcript.....	948	700
Clerk's certificate, U. S. district court.....	955	705
Clerk's certificate, U. S. circuit court of appeals.....	957	705
Placita	959	706
Order of July 9, 1920, granting leave to file petition.....	959	706
Notice of motion to stay proceedings.....	960	707
Motion for stay pending review.....	962	708
Affidavit of Henry Vette.....	964	709
Peter M. Zuncker.....	966	711
Theodore Regensteiner.....	967	712

	Original.	Print.
Affidavit of Scott Brown.....	969	713
George W. Miller.....	970	714
Statement attached to affidavit of George W. Miller.....	972	716
Order of July 12, 1920, staying proceedings, etc.....	975	717
Appearance of counsel for petitioning and intervening creditors	976	718
Stipulation extending time to file Exhibit C.....	977	719
Order of August 6, 1920, extending time to file Exhibit C.....	978	719
Proof of service of order of July 9, 1920.....	979	720
Copy of order attached to proof of service.....	981	722
Certificate of clerk to copy of order.....	983	723
Exhibit C to petition to review and revise, filed August 14, 1920 (not set out).....	984	723
Appearance of counsel for intervening creditor.....	984	724
Appearance of counsel for intervening petitioner.....	985	724
Notice of motion to set cause for hearing.....	986	725
Motion suggesting the death of Frank A. Hecht.....	987	725
Order of December 17, 1920, granting leave of executors of Frank A. Hecht, deceased, to file brief, etc.....	988	726
Answer of the executors of Frank Hecht, deceased, and Joseph M. Finn.....	989	727
Order of February 9, 1921, extending time to file brief.....	997	732
Appearance of counsel for certain creditors.....	998	732
Notice of motion to set cause for oral argument.....	999	733
Order of March 7, 1921, setting cause for argument.....	1001	733
Hearing, May 2, 1921.....	1002	734
Anton, Alschuler, J.....	1003	734
Argument	1026	752
Order denying petition for rehearing.....	1027	754
Clerk's certificate.....	1029	754
Writ of certiorari and return.....	1030	754

1

Original Petition to Review and Revise.

(Filed July 9, 1920.)

IN THE

United States Circuit Court of Appeals for the Seventh Circuit,

OCTOBER TERM, A. D. 1919.

Original, No. 2855.

In the Matter of MARCUSE & COMPANY et al., Alleged Bankrupts.

HENRY VETTE, PETER M. ZUNCKER, THEODORE REGENSTEINER,
CLEMENT STUDEBAKER, JR., GEORGE M. STUDEBAKER, Petitioners.

Harry P. Weber, George W. Miller, Counsel for Petitioners Vette,
Zuncker and Regensteiner.

George T. Buckingham, Donald Defrees, Stephen E. Hurley,
Counsel for Petitioners Clement Studebaker, Jr., and George M.
Studebaker.

(Endorsed:) Filed Jul. 9, 1920. Edward M. Holloway, Clerk.

2 In the United States Circuit Court of Appeals for the Seventh
Circuit.

In the Matter of MARCUSE & COMPANY et al., Alleged Bankrupts.

Original Petition to Review and Revise.

The petition of Henry Vette, Peter M. Zuncker, Theodore Regen-
steiner, Clement Studebaker, Jr., and George M. Studebaker to
review and revise in matters of law the order of reference of the
United States District Court entered on July 1, 1920, and the
proceedings in connection therewith.

To the Honorable the Judges of the United States Circuit Court of
Appeals for the Seventh Circuit:

Your petitioners, Henry Vette, Peter M. Zuncker, Theodore Re-
gensteiner, Clement Studebaker, Jr., and George M. Studebaker,
jointly and each for himself, respectfully show unto the Court:

Original Petition.

1. That on March 11, 1920, a petition in bankruptcy was filed by
C. B. Giles, John Janca and I. Feigel in the United States District
Court for the Northern District of Illinois, Eastern Division, being

cause number 28,339 in bankruptcy in said court, alleging, among other things, that Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, co-partners doing business as Marcuse & Company, had, for the greater portion of the six months next preceding the filing of the said petition, their principal place of business in the City of Chicago, in the County of Cook and State of Illinois, and were engaged in the business of buying and selling stocks and bonds and other securities, and further alleging that the said Marcuse, Morris, Finn and Hecht, copartners doing business under the trade name of Marcuse & Company, were insolvent and had committed certain acts of bankruptcy, and praying that the said Marcuse, Morris, Finn and Hecht, copartners doing business under the trade name of Marcuse & Company, and each of them, be adjudged by the court to be bankrupt as provided in the Acts of Congress relating to bankruptcy (which said petition is hereinafter for brevity referred to as "Original Petition").

3

Appointment of Receiver.

2. That thereafter on the 12th day of March, A. D. 1920, the Central Trust Company of Illinois was appointed the receiver in bankruptcy in the said cause of the estate and assets of the said firm of Marcuse & Company, alleged bankrupt, and that it thereupon duly qualified, and has since acted as such receiver.

Meyer Petition.

2. That on the same day, to-wit, on the 12th day of March, A. D. 1920, Fred Meyer, E. H. Allen and Nathan Jacobs filed their intervening petition, adopting the allegations of the creditors' petition filed on March 11, 1920, and praying that Ben Marcuse and Lew Morris, individually and as copartners, trading as Marcuse & Company, be adjudged bankrupts (which said petition is hereinafter for brevity referred to as "Petition of Fred Meyer").

Lachman Petition.

4. That thereafter on the 15th day of March, A. D. 1920, Harold Lachman filed his intervening petition representing, among other things, that the copartnership known by the name and style of Marcuse & Company had held itself out to be what is known under the laws of the State of Illinois as a limited partnership and as having been organized pursuant to "An Act of the General Assembly of the State of Illinois, entitled An Act to Revise the Law in relation to Limited Partnerships, Approved March 18, 1874, in force July 1, 1874" (hereinafter referred to as "Limited Partnership Act of 1874"), and that pursuant to the provisions of the said Act Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht did enter into a partnership agreement (hereinafter for brevity referred to as "Limited Partnership Agreement"), the terms of which said agreement are set out in full in said petition, and a copy whereof is attached hereto, marked "Exhibit A", and is hereby referred to

and made a part hereof as fully and to the same effect as if incorporated herein; and further representing that the said Marcuse, Morris, Finn and Hecht did thereafter on July 2, 1917, file in the office of the clerk of Cook County, in Book 42, Documentary Records, "Limited Partnerships," page 156, an instrument known as number M-38,856, the same being a certificate for a limited partnership (hereinafter for brevity referred to as "Limited Part-

4 nership Certificate"), which said certificate is set out in full in said petition, and that at the time the limited partnership certificate was filed for record, to wit: on July 2, 1917, the Limited Partnership Act of 1874 had been repealed, such repeal having been effected by the enactment by the State Legislature of the State of Illinois of an "Act to Make Uniform the Law Relating to Limited Partnerships," known as House Bill No. 303, which said act was filed and became a law before July 2, 1917, and that there was not then in force and effect in the State of Illinois any statute permitting a limited partnership engaged in the brokerage business to exist under and by virtue of the laws of said state; that by reason of the premises the said copartnership of Marcuse & Company became and was a general partnership, and each of the members thereof became and was liable for the debts and all of the obligations of the partnership business, and that the liability of said Finn and Hecht was not limited to the amount of money set forth in the Limited Partnership Agreement, but that the property of each and all of the four members of said copartnership became and was subject to the payment of its obligations; and praying that the court enter an order directing the Central Trust Company of Illinois, as receiver, to seize, take and hold for the benefit of the creditors of said estate of Marcuse & Company all of the property and assets of the members of said copartnership, namely, Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht.

Amended Petition of Fred Meyer.

5. That thereafter on March 16, 1920, the said Fred Meyer, the said E. H. Allen and the said Nathan Jacobs filed their supplemental and amended intervening petition (hereinafter for brevity referred to as "Amended Petition of Fred Meyer"), adopting the allegations of the original petition and praying that Ben Marcuse, Lew Morris, Joseph Finn and Frank Hecht, individually and as co-partners, be adjudged bankrupts.

Answers of Hecht and Finn.

6. That thereafter, on March 19, 1920, Frank A. Hecht and Joseph M. Finn, respectively, filed their separate answers to the petition of Harold Lachman, admitting in said answers the execution of a limited partnership agreement substantially in the form set up in the said petition, and further admitting the execution of a limited partnership certificate substantially in the words and figures set forth in said petition, and the filing of the said limited partnership certificate on July 2, 1917, and represent-

ing, each for himself, that the terms of the limited partnership agreement were carried out by the said Hecht and the said Finn by the payment into the capital of said limited partnership of the sum of \$190,000, \$95,000 thereof having been contributed by said Hecht and \$95,000 thereof having been contributed by said Finn, and further representing that a large part of the capital so contributed by said Hecht and by said Finn was furnished by certain contributors who received certain trust certificates under the terms of a certain trust agreement, and that under and by virtue of the terms of said trust agreement the holders of said certificates therein described were entitled to participate in any income or profits arising from the investment of the said sum of \$190,000 in said limited partnership.

That the said Hecht and the said Finn in their said answers to the amended petition further represented that they, and each of them, entered into the limited partnership agreement well believing that is constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of each of them would be the obligations of a limited partner only, and that they, or either of them, did not intend to become general partners, or to assume any other liabilities in connection therewith than such as were set forth in the Limited Partnership Agreement, and that at all times thereafter, until the claim was made in these proceedings that the said Hecht and the said Finn were general partners, they had no knowledge of the existence of any possible question as to the liability of either of them as general partners, and further represented that upon learning, at or about the time of the filing of the said petition of said Lachman, that some claim was made that, owing to some mistake or failure to comply with the laws of Illinois, they might be subjected to claims against them as general partners, and while still believing and alleging that they, and each of them, were only limited partners and not general partners, but desiring to avoid any question in connection therewith, they, the said Finn and the said Hecht, promptly tendered in cash to the said Central Trust Company of Illinois, as receiver of the said partnership known as Marcuse & Com-

6
pany, the sum of \$46,000, an amount larger than all of the profits or other compensation paid to the said Finn and the said Hecht and to all persons receiving any shares in said income or profits under or on account of the ownership of the said trust certificates, and that at the same time they delivered to the said receiver a written instrument of tender and renunciation, a copy of which is set forth in said petition; and further represented that by the terms of the act known as the Uniform Limited Partnership Act of the State of Illinois it is provided, in substance, that a person who has contributed to the capital of a business conducted by a person or partnership, erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership, provided that on ascertaining the mistake, he promptly renounces his interest in the profits of the business or other compensation by way of income.

That the said Hecht and the said Finn in their separate answers to the petition of Harold Lachman further represented that at no time since the execution of the limited partnership agreement had they, or either of them, participated in the management or control of the operation or conduct of the business of said copartnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership, and that they had attempted in good faith to comply with the provisions of the statute of the State of Illinois, and they, and each of them, denied the jurisdiction of the court to adjudge them, or either of them, bankrupts, and prayed that the said petition be dismissed as to them, and as to each of them.

That on the 23rd day of March, A. D. 1920, the said Hecht and the said Finn, respectively, filed their separate answers to the original petition, and that thereafter on the 24th day of March, A. D. 1920, the said Finn and the said Hecht, respectively, filed their separate answers to the amended petition of Fred Meyer, in each of which said answers the said Hecht and the said Finn denied that they were liable in any way for the debts of the firm of Marcuse & Company as general partners, or in any way other than as special partners of said firm, repeating substantially the allegations of their respective answers to the petition of Harold Lachman filed by each of them on March 19, 1920.

7

Rule to Show Cause.

7. That on April 1, 1920, an order was entered by the court granting leave to Joseph M. Finn to file an amended answer in the nature of a cross petition to the intervening petition of C. B. Giles and others, and directing that a rule to show cause be entered upon the parties respondent to the said amended answer in the nature of a cross petition, and that subpoenas issue to said respondents.

Finn Amendments.

8. That on the same day, to wit, April 1, 1920, the said Joseph M. Finn filed amendments to his separate answers to the original petition and to the amended petition of Fred Meyer and to the petition of Harold Lachman (which said amendments are hereinafter for brevity referred to as "Finn Amendments"), alleging, in substance, in each of said amendments that in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company the said Finn and the said Hecht were not acting for themselves alone, but were acting on behalf of certain persons who contributed the moneys which went to make up the sum of \$190,000 contributed in the name of the said Finn and the said Hecht, namely, Frank A. Hecht, Joseph M. Finn, Theodore Regensteiner, Henry Vette, Peter M. Zunker and Richard Yates Hoffman, acting for and on behalf of Clement Studebaker, Jr., and George M. Studebaker, and representing further that the relationship of the said Hecht and of the said Finn to the said firm

of Marcuse & Company was not in any essential respect different from the relationship to the said firm of the other contributors to the said fund.

That the said Joseph M. Finn in his said amendments further represented that all of the said last named parties executed an instrument purporting to be an instrument whereby all of the said parties agreed to become limited partners in said copartnership of Marcuse & Company, with said Marcuse and Morris as general partners, and wherein and whereby all of said parties agreed to and did assume the same responsibility and the same liability as did said Finn and said Hecht; that thereafter it was ascertained that certain rules and regulations of the New York Stock Exchange prohibited any partnership dealing on the New York Stock Exchange from having more than two persons designated as special partners, and that it was thereupon agreed between all of

8 said parties that said Finn and said Hecht should become nominally the special or limited partners in said partnership, but that said interest should be held for the benefit of all of said last named persons in the proportions in which they had contributed said sums of money, and that for the purpose of carrying into effect said understanding said Finn and said Hecht executed a trust agreement under date of June 30, 1917, wherein and whereby the Chicago Title and Trust Company was constituted the trustee for all of said parties, including said Finn and said Hecht, for the collection and distribution of income payable or distributable under the terms of the special or limited partnership agreement to the special partners named therein, and that the trust agreement was prepared by various attorneys representing the different persons who had theretofore agreed to become special partners in said firm of Marcuse & Company, and that this defendant signed the said trust agreement upon the understanding that the phrases and terms therein used were such as were technically required to put into form the prior understanding that all the parties to said prior instrument should retain their prior relationship to the said proposed enterprise, and that the names of said Finn and said Hecht should be used in the said new agreement of partnership for the sole purpose of complying with the rules and regulations of the New York Stock Exchange; and the said Finn further represented that his attention was not called at the time of the execution of said trust agreement, or at any time prior thereto, to any words or phrases in said instrument which would in any way seem to impose any other or greater responsibility or liability upon said Finn or said Hecht in connection with the said special partnership than was imposed upon the other persons making like contributions to the said capital stock of the said limited partnership, and the said Finn further represented that if any words or phrases in said trust agreement appear to impose any other or different liability upon the said Finn and the said Hecht from that of the other contributors to said fund such words and phrases were inadvertently written in said instrument when said instrument, or some part thereof, was copied from some form of trust agreement

supposed to be applicable to the then situation, and should be, to the extent necessary therefor, reformed in order to express the true meaning and intent of the parties thereto; and that in fact it was fully understood and agreed that said Finn and said Hecht
9 in exercising any powers connected with said trust should be in all respects subject to the direction of the certificate holders therein described, and that the rights and obligations of each of the holders of said certificates should be identical with the rights and obligations of each of the other holders of said certificates, including said Finn and said Hecht.

That the said Finn in his said amendments further represented, although specifically denying that either he or any of the other contributors to said fund are in any way general partners of the said partnership of Marcuse & Company, or liable for any indebtedness of the said partnership, except to the extent of the contributions made, that if the said Finn and the said Hecht are, or shall be held in law to be, general partners and liable in any way for any of the debts or liabilities of said partnership, then the said Richard Yates Hoffman, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker likewise are and should be held to be general partners and liable for all the debts of said partnership, and said Finn in his said amendments prayed that all of said last named persons be made parties to the said proceedings, and that a bankruptcy subpoena issue against them, and that a rule be entered upon them to show cause why they should not be joined as defendants to the original petition in bankruptcy in said cause.

Responses to Finn Amendments.

9. That thereafter on April 12, 1920, each of your petitioners, and the said Richard Yates Hoffman filed their separate responses to the said Finn amendments denying that said Finn and Hecht in assuming, or attempting to assume, the position of special partners were not acting for themselves alone, denying that they were acting on behalf of your petitioners and Richard Yates Hoffman, denying that the relationship of the said Hecht and Finn was not essentially different from the relationship of your petitioners and Richard Yates Hoffman, and each of them, to said firm, denying that all of the parties mentioned and described in the said amendments executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said copartnership of said Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners and averring that early
10 in April, 1917, a contemplated contract of limited partnership was drafted and signed by divers parties who contemplated the formation of a limited partnership, but denying that said signed draft was ever delivered by or to any of the parties thereto or ever became effective for any purpose, and averring that subsequently and independent thereof, said Marcuse, Morris, Finn

and Hecht entered into and executed among and between themselves the limited partnership contract "Exhibit A," and averring that your petitioners and said Hoffman, or any of them, were not parties to the limited partnership agreement, "Exhibit A," and denying that it was ever agreed between all of the said parties, or by your petitioners and any of such parties, that said Hecht and Finn should become, nominally, special or limited partners under the limited partnership agreement, "Exhibit A."

That your petitioners and the said Hoffman, in their said responses to the Finn amendments, averred that under date of June 30, 1917 said Finn and Hecht executed a certain trust agreement (hereinafter referred to for brevity as "Trust Agreement") to and with Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company, a copy of which said Trust Agreement is attached to each of the said responses to the Finn amendments, and a copy whereof is hereto attached, marked "Exhibit B," and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full, and further admitted that said trust agreement was prepared by a number of attorneys representing the different persons named in said amendments, and denied that said Hecht or Finn or any signer thereof signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms, and denied that any of the terms of said trust agreement were inadvertently used, but averred that before the execution thereof it was prepared with great care and with frequent revisions, and further averred, on information and belief, that it was made and signed with full knowledge by the signers thereof of its contents and terms.

That your petitioners and the said Hoffman, in their said responses to the Finn amendments, admitted the allegations in the said Finn amendments to the effect that they, and each of them, were not general partners in the firm of Marcuse & Company, and denied that they, or any of them, were, or ever had been, partners, general or special, of the said firm of Marcuse & Company
11 and further denied the jurisdiction of the court, and prayed that the rule to show cause be dismissed.

Amended Petition.

10. That thereafter on April 29, 1920, the court entered an order giving leave to I. Feigel to file his amended petition.

That thereafter on April 30, 1920, by order of court the said order of April 29, 1920, was vacated, and leave was given to I. Feigel, Nathan Jacobs and W. O. Frazee to file their amended petition; that thereupon they, the said I. Feigel, the said Nathan Jacobs and the said W. O. Frazee, filed a petition entitled "The amended petition of I. Feigel, one of the original petitioning creditors, the amended petition of Nathan Jacobs, one of the intervening petitioning creditors, and the intervening petition of W. O. Frazee"

(which said petition is hereinafter for brevity referred to as "Amended Petition"); that in the amended petition it was alleged that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, doing business under the trade name of Marcuse & Company, had, for the greater portion of six months next preceding the date of the filing of the amended petition, their principal place of business in the City of Chicago, in the County of Cook and State of Illinois, and were engaged in the buying and selling of stocks and other securities; that the petitioners named therein had certain provable claims against them; and that they, the said alleged bankrupts, and each of them, individually and as copartners doing business as Marcuse & Company, were insolvent and had committed certain acts of bankruptcy, and praying that the said Marcuse, Morris, Finn, Hecht, Clement Studebaker, Jr., George M. Studebaker, Hoffman, Regensteiner, Vette and Zuncker, individually and as copartners doing business as Marcuse & Company, be adjudged by the court to be bankrupts.

Answers to Amended Petition.

11. That thereafter on May 8, 1920, your petitioners and Richard Yates Hoffman, respectively, filed their separate answers to the amended petition, each denying the jurisdiction of the court as to himself and as to the subject matter of the said petition, and denying, among other things, that Ben Marcuse, Lew H. Morris,

12 Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Peter M. Zuncker, Henry Vette and Theodore Regensteiner were copartners of Marcuse & Company, or were doing business under the trade name of Marcuse & Company, or were engaged in the business of buying or selling stocks and bonds and other securities as partners of Marcuse & Company, and averring upon information and belief that the said Marcuse, Morris, Finn and Hecht were engaged in the business of buying and selling stocks and bonds and other securities in the City of Chicago under the trade name of Marcuse & Company, and that no other persons were doing business under that name, and further averring upon information and belief that the said business so conducted by the said Marcuse, Morris, Finn and Hecht under the trade name of Marcuse & Company was created under and by virtue of a certain agreement in writing signed and executed by and between the said Marcuse, Morris, Hecht and Finn and no others on June 30, 1917, and purporting to form between them, and between them alone, a limited copartnership under the name of Marcuse & Company, a copy of which said partnership agreement is attached to each of the said last mentioned answers as an exhibit and of which Exhibit A to this petition is a true copy.

That your petitioners and Richard Yates Hoffman, and each of them, in their said respective answers to the amended petition, denied that they, or any of them, had signed, or were parties to the

limited partnership agreement, Exhibit A; and averred on information and belief that the said Finn and the said Hecht made and executed the trust agreement, Exhibit "B" to this petition.

That your petitioners, and the said Hoffman, in their said separate answers to the amended petition denied that they had committed acts of bankruptcy as charged against them in the said amended petition; denied that they, or any of them, were insolvent, individually or as alleged partners of the firm of Marcuse & Company, and denied that the said firm of Marcuse & Company, or the copartnership of Marcuse & Company aforesaid, consists in whole or in part of said Clement Studebaker, Jr., George M. Studebaker, Hoffman, Vette, Regensteiner and Zuncker, or any of them; and averred that they, or any of them, should not be declared bankrupts for any purpose whatsoever.

That your petitioner Henry Vette in his said separate answer to the amended petition averred that upon the execution of
13 the said trust agreement he, acting through his attorney, paid to the said Frank A. Hecht and the said Joseph M. Finn, under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder, and for no other purpose whatever, the sum of \$30,000, and further averred that thereupon the said Chicago Title and Trust Company, under and by virtue of said trust agreement and not otherwise, and in consideration of the payment of said \$30,000, issued its certificate in the name of the said Hen-v Vette, bearing date June 30, 1917, for 60 shares in the Hecht-Finn trust created by said trust agreement; that said certificate was delivered by said Chicago Title and Trust Company to the attorney for Henry Vette and thereafter was delivered by said attorney to him, and further averred that the said certificate was issued under said trust agreement and delivered to and accepted by him as aforesaid in sole reliance upon the terms of said trust agreement.

That the said Henry Vette in his said separate answer to the amended petition set out in full as an exhibit to his said answer a copy of the said certificate for 60 shares in the said Hecht-Finn trust issued to him as aforesaid, said certificate being substantially in the form prescribed in the trust agreement, Exhibit B to this petition.

That your petitioner Peter M. Zuncker in his said separate answer to the amended petition averred that upon the execution of the said trust agreement he, acting through his attorney, paid to Frank A. Hecht and Joseph M. Finn, under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder, and for no other purpose whatsoever, the sum of \$25,000, and that thereupon the said Chicago Title and Trust Company, under and by virtue of said trust agreement and not otherwise, and in consideration of the payment of said \$25,000, issued its certificate in his said name, bearing date of June 30, 1917, for 50 shares in the Hecht-Finn trust created by said trust agreement; that the said certificate was delivered by the Chicago Title and Trust Company to the attorney of the said Peter M. Zuncker, and was thereafter de-

livered to him by said attorney, and further averred that the said certificate was issued under said trust agreement and delivered to and accepted by him as aforesaid in sole reliance upon the terms of said trust agreement.

That the said Peter M. Zuncker in his said separate answer to the amended petition set out in full as an exhibit to his
14 said answer a copy of the said certificate for 50 shares in the said Hecht-Finn trust issued to him as aforesaid, said certificate being substantially in the form prescribed in the trust agreement, Exhibit B to this petition.

That your petitioner Theodore Regensteiner in his said separate answer to the amended petition averred that upon the execution of said trust agreement he paid to the said Hecht and the said Finn, as trustees under and by virtue of said trust agreement, and in order to acquire a trust certificate thereunder and for no other purpose whatsoever, the sum of \$28,500, and further averred that there was delivered to this respondent, through his attorney, under and by virtue of said trust agreement, and in consideration of the payment of said sum of \$28,500, the certificate of the said Chicago Title and Trust Company in favor of the said Theodore Regensteiner, bearing date June 30, 1917, for 57 shares in the Hecht-Finn trust created by said trust agreement, and further averred that the original certificate in his said name was issued under said trust agreement as aforesaid and was delivered to and accepted by this respondent as aforesaid in sole reliance upon the terms of said trust agreement.

That the said Theodore Regensteiner in his said separate answer to the amended petition set out in full as an exhibit to his said answer a copy of the said certificate for 57 shares in the said Hecht-Finn trust issued to him as aforesaid, said certificate being substantially in the form prescribed in the trust agreement, Exhibit B to this petition.

That the said Theodore Regensteiner in his said separate answer to the amended petition further averred that he subsequently surrendered the said certificate for 57 shares in the Hecht-Finn trust, issued to him as aforesaid, to the said Chicago Title and Trust Company for the purpose of having substituted therefor two certificates, one for 37 shares issued to him, the said Theodore Regensteiner, and the other for 20 shares issued to Israel Grollman, which said certificates were set out in full as exhibits to the answer of the said Theodore Regensteiner, said certificates being substantially in the form prescribed in the trust agreement, Exhibit B to this petition.

That Clement Studebaker, Jr., and George M. Studebaker, two of your petitioners herein, in their respective answers to the amended petition, averred on information and belief that upon the execution of the trust agreement Richard Yates Hoffman paid to
15 Hecht and Finn, as trustees under and by virtue of the trust agreement, and in order to acquire a certificate thereunder, and for no other purpose whatsoever, the sum of \$50,000, and that on June 30, 1917, Studebaker Bros.' trust made a check for \$50,000

payable to the order of Richard Yates Hoffman and delivered the same to him, and that Richard Yates Hoffman immediately and on the same day endorsed said check and made it payable to the order of said Hecht and Finn, as trustees, and then delivered the same to them under and by virtue of said trust agreement, and not otherwise, and that in consideration of the payment of said \$50,000, and under and by virtue of said trust agreement and not otherwise, the Chicago Title and Trust Company issued its certificate in the name of said Richard Yates Hoffman, bearing date of June 30, 1917, for 100 shares in the Hecht-Finn trust created by said trust agreement; that the said certificate was delivered by the said Chicago Title and Trust Company to the said Richard Yates Hoffman on, to wit, the 2nd day of July, 1917, and that he thereupon assigned the same and delivered it to said Studebaker Bros.' trust, which was at all times the owner of said certificate as a part of its assets and as a part of its funds, and that, except as above stated, Richard Yates Hoffman had no connection with or relation to said subject matter.

That the said Clement Studebaker, Jr., and the said George M. Studebaker in their respective answers to the amended petition set out in full as an exhibit to their said answers a copy of the said certificate for 100 shares in the Hecht-Finn trust issued to Richard Yates Hoffman as aforesaid, said certificates being substantially in the form prescribed in the trust agreement, Exhibit B to this petition.

That the said Clement Studebaker, Jr., and the said George M. Studebaker in their said answers to the amended petition averred that neither the said Clement Studebaker, Jr., nor the said George M. Studebaker, had ever at any time contributed or paid any sum of money to said Hecht and Finn, or either of them, or made any agreement of any kind with them, or either of them, and further averred that Studebaker Bros. Trust then consisted of certain property constituting a fund, the legal and equitable title to which was vested in the Chicago Title and Trust Company, which was being administered by said Chicago Title and Trust Company as a fund under a certain trust deed (hereinafter referred to as "Trust Deed"),

made and executed March 1, 1916, for the benefit of various persons, including the said Clement Studebaker, Jr., and the said George M. Studebaker; that the said \$50,000 paid for the certificate issued to the said Richard Yates Hoffman as aforesaid was a portion of the money and funds held by the Chicago Title and Trust Company under the trust deed, and that said certificate so purchased with the said \$50,000 was and became a part and portion of the property so held thereunder.

That the said Clement Studebaker, Jr., and the said George M. Studebaker in their said answers to the amended petition further averred on information and belief that the said certificate in the name of Richard Yates Hoffman was issued under said trust agreement as aforesaid, and was delivered to and accepted by said Richard Yates Hoffman as aforesaid, and was accepted by and paid for by said Studebaker Bros. Trust as aforesaid in sole reliance upon

the terms of said trust agreement, and that the said Richard Yates Hoffman in paying said money and in acquiring and accepting therefor said certificate had no intention whatever of becoming a partner of the said Marcuse, Morris, Finn, Hecht, Clement Studebaker, Jr., George M. Studebaker, Vette, Zuncker, Regensteiner, or of any one or more of them, under the name of Marcuse & Company or otherwise, but, on the contrary, intended not to become a partner with any person whomsoever, as Marcuse & Company or otherwise, and in good faith believed that he was not becoming and did not become a copartner of Marcuse & Company, or one of the members of said copartnership of Marcuse & Company, or of any copartnership whatsoever.

That the said Clement Studebaker, Jr., and George M. Studebaker in their said answers to the amended petition further averred that they, or either of them, never at any time saw said Hecht or said Finn, or had any meeting or agreement with them, or either of them, or solicited them, or either of them, to become a partner of Marcuse & Company, or made or entered into any agreement whatever with said Hecht and Finn, and that the sole relation of the said Clement Studebaker, Jr., and the said George M. Studebaker to the subject matter of said trust agreement was that Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of \$50,000 in money, with which money said certificate was purchased as an investment for and on behalf of said Studebaker Bros. Trust and as a part of its property.

That the said Clement Studebaker, Jr., and the said George M. Studebaker in their said answers to the amended petition further averred that at the time of the occurrence of the various transactions above mentioned they, and each of them, had no participation in or knowledge and information concerning the same; that they, and each of them, had never seen the limited partnership agreement, Exhibit "A," or the trust agreement, Exhibit "B," or the certificate issued to the said Richard Yates Hoffman as aforesaid, or the said check of the said Studebaker Bros. Trust for \$50,000 until within a few weeks before their said answers were filed, and that prior to March 11, 1920, their sole knowledge relating to said transactions was that said Studebaker Bros. Trust had purchased said certificate as an investment and carried and reported it among its assets.

Answers of Hecht and Finn to Amended Petition.

12. That thereafter on May 10, 1920, an order was entered by the court directing that the answers theretofore filed by the said Frank A. Hecht and the said Joseph M. Finn to the original petition stand as their respective answers to the amended petition.

Hearing.

13. That on the same day, to wit, May 10, 1920, the cause came on to be heard before the Honorable Kenesaw M. Landis, a judge of

the District Court of the United States, upon the amended petition and the answers thereto filed by your petitioners, and by Joseph M. Finn, Frank A. Hecht and Richard Yates Hoffman; that by agreement of counsel and at the direction of the court the taking of testimony and the introduction of evidence was confined solely to the partnership issue, i. e., the question as to whether or not your petitioners, and Richard Yates Hoffman and Frank A. Hecht and Joseph M. Finn, or any of them, are or have been general partners in the firm of Marcuse & Company, and are or have been liable for the debts of the said firm; that, as will more fully appear in the certificate of evidence which forms a part of the transcript of record to be filed herein, and marked Exhibit "C" to this petition, which is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full, counsel for the petitioning creditors introduced in evidence the limited partnership agreement, Exhibit "A" to this petition, and the trust agreement, Exhibit "B" to this petition.

18 That the limited partnership agreement, Exhibit "A" to this petition, introduced in evidence as aforesaid, purports to be a contract of limited partnership signed and executed by the said Marcuse, Morris, Hecht and Finn, and by them alone, that by the terms and provisions of the said limited partnership agreement the said Marcuse, Morris, Hecht and Finn purported to create a limited partnership in which the said Marcuse and Morris are general partners and the said Hecht and Finn are special partners, and wherein and whereby the said Marcuse and the said Morris agreed to make certain contributions to the capital of the firm of Marcuse & Company, and the said Hecht and the said Finn each agreed to contribute \$95,000 to the capital of the said firm.

That the trust agreement, Exhibit "B," so introduced in evidence, purports to be a trust agreement signed and executed by Joseph M. Finn and Frank A. Hecht; that in the said trust agreement it is recited that Ben Marcuse, Lew H. Morris, Frank A. Hecht and Joseph M. Finn have entered into the limited partnership agreement, Exhibit A (a copy of which is attached to the original of the trust agreement as an exhibit thereto), that by the terms of the said limited partnership agreement the said Hecht and the said Finn, as special partners, are and will from time to time become entitled to payments and distributions of profits and income, and that they as trustees will receive and hold said profits and income as a trust fund (the Hecht-Finn trust) for the benefit of the holders of transferable trust certificates to be issued under the said trust agreement; that it is provided by the terms of said trust agreement that said copartnership of Marcuse & Company shall pay direct to Chicago Title and Trust Company for the account of the Hecht-Finn trust such trust fund when and as it becomes at any time under the limited partnership agreement, payable and distributable to said trustees, and that said Chicago Title and Trust Company shall, after deducting its fees, pay to the then holders of trust certificates, in the proportions in which their separate shareholdings stand to each other, the said trust fund segregated and paid or distributed to Chicago Title and

Trust Company for the account of the Hecht-Finn trust; that, among other things, it is also provided in said trust agreement, in Section 6 thereof, that:

"The holders of Trust Certificates shall have no right, title or interest, directory, proprietary or otherwise, in the said copartnership or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto, both legal and equitable, being vested in the Trustees, nor shall the holders of trust certificates by the acceptance thereof be construed to have assumed any liability whatsoever with respect to said trust or said copartnership, but the interest of each and every holder of Trust Certificates shall consist solely of the right to receive his proportionate share of the net part or parts of the Trust Fund from time to time payable to the Trust Company hereunder, including the proportionate share of such holder of the corpus of said fund upon any dissolution of said copartnership, and such right shall be, and be taken to be, personal property and may be assigned and transferred as such subject to the limitations herein and in said Trust Certificates set forth and contained."

That the limited partnership agreement and the trust agreement were executed upon June 30, 1917, and that the limited partnership agreement was not executed on April 2, 1917, the date it bears.

That at the taking of testimony and the hearing and presenting of evidence upon the said tenth day of May, A. D. 1920, and upon the days following, the court, over the objection of your petitioners, and of each of them, admitted evidence as to various incidents, transactions and conversations occurring and taking place prior to the execution on June 30, 1917, of the limited partnership agreement, Exhibit "A," and the trust agreement, Exhibit "B," and that the court, over the objection of your petitioners and each of them, admitted evidence as to the signing and disposition of certain documents prior to June 30, 1917; that at the close of the taking of the testimony, the court was advised by all parties appearing that there was no further evidence to be presented upon the question of partnership, and thereupon arguments of counsel were heard upon the sole issue as to whether or not your petitioners and the said Hoffman, or any of them, were members of or partners, general or special, in the firm of Marcuse & Company.

Reference to Exhibit "C."

14. That on and after March 11, 1920, divers and sundry pleadings were filed, orders entered, process issued and proceedings had in relation to the things and matters set forth herein as will more fully appear in the transcript of record to be filed herein as Exhibit "C" to this petition, and that each of the divers and sundry pleadings, process, orders and other proceedings, referred to specifically in this petition are fully set forth in and as a part of said Exhibit "C" and are hereby referred to and incorporated herein as fully and to the same effect as if herein set forth.

Announcement of June 21st.

15. That on June 21, 1920, the court announced that he had reached a conclusion upon the issue presented at the hearing aforesaid, and that in substance he stated that conclusion to be that the said Frank A. Hecht, Joseph M. Finn, Clement Studebaker, Jr., George M. Studebaker, Henry Vetter, Peter M. Zuncker and Theodore Regensteiner were and are all general partners of the firm of Marcuse & Company; that the so-called special partnership, by reason of the failure to comply with the Illinois statutes, is a general partnership; and that the said Clement Studebaker, Jr., George M. Studebaker, Peter M. Zuncker, Henry Vette and Theodore Regensteiner had selected the said Hecht and the said Finn as their agents for the operation of the special partnership, which said conclusion the court stated to be his finding.

Refusal to Enter Order.

16. That on July 1, 1920, your petitioners, by and through their counsel, moved the court to enter an order embodying his finding so announced upon the question as to whether or not they, and each of them, are members of the firm of Marcuse & Company and general partners therein and liable for all the debts and obligations thereof, which said order the court then and there refused to enter.

17. That afterwards, but on the same day, to wit: July 1, 1920, the court entered an order in said cause, which said order is in words and figures as follows:

"Cause referred to Referee Wean for hearing on assets and liabilities up to March 11, 1920, and directing finding of facts and conclusions of law, as to solvency up to March 11, 1920, of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank H. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, composing the firm of Marcuse & Co.

21 In proceeding under this order the referee will not consider transactions shown by books of Marcuse & Company to have been closed prior to March 11, 1920."

Errors of Law.

That the said order of July 1, 1920, and the proceedings had in connection therewith and relating thereto are erroneous in matter of law:

1. In that the court refused to hold that the question whether your petitioners, and each of them, were and are partners in the firm of Marcuse & Company, and as such liable for the debts and obligations of said firm, must be determined from and by the consideration and construction of said trust agreement, Exhibit B, and the limited partnership agreement, Exhibit A, a copy of which is attached to said trust agreement.

2. In that the court, over the objections of your petitioners, admitted evidence as to conversations, incidents and transactions occurring prior to June 30, 1917, the date of the execution of said limited partnership agreement and said trust agreement, for the purpose of determining whether or not your petitioners, and each of them, became and were members of the firm of Marcuse & Company, regardless of the provisions of said trust agreement and said limited partnership agreement.

3. In that the court, over the objections of your petitioners, admitted in evidence for the same purpose a limited partnership document signed in April, 1917, by said Marcuse, Morris, Hecht, Finn, Vette, Zunker, Regensteiner and Hoffman, which limited partnership document was never delivered and never became effective.

4. In that the court found that your petitioners became and are general partners in the firm of Marcuse & Company, and entered the order of July 1, 1920, referring the cause to Referee Wean for a hearing on assets and liabilities up to March 11, 1920, to make a finding of facts with conclusions of law as to the solvency, up to said date, of your petitioners, and of each of them, together with the said Marcuse, Morris, Hecht and Finn, as members of the firm of Marcuse & Company, thus directing an inquiry into the private business affairs of your petitioners, and of each of them, whereas the court should have found, and so ordered, adjudged and decreed that your petitioners were not and are not members of the firm of Marcuse & Company, and should have entered an order dismissing said bankruptcy proceedings as to your petitioners, and as to each of them.

5. In that, even if it was proper for the court to receive and consider all of the evidence admitted upon said hearing, there was no evidence to justify his said finding that the said Vette, Zunker, Regensteiner, Clement Studebaker, Jr., and George M. Studebaker and each or any of them, were general partners in the said firm of Marcuse & Co., and were liable for the debts of said firm; and the court should have found that said Vette, Zunker, Regensteiner, Clement Studebaker, Jr., and George M. Studebaker and each of them were not partners, general or special, in the said firm of Marcuse & Co. and were not liable for the debts of the said firm, and should have dismissed the said bankruptcy proceedings as to them and as to each of them.

6. In that prior to the entry of the order of reference referred to, but after the court had announced his decision and finding that your petitioners were and are general partners of Marcuse & Company, and as such liable for its debts, the court refused to enter an order in accordance with such decision and finding, although the court, subsequent to such refusal, entered the order of reference herein referred to. While your petitioners maintain that said order of reference is reviewable, yet if said order of reference should be held by this court to be not sufficiently definite in its findings as to the partnership question as to be reviewable under a petition to review and revise, then petitioners allege that the court should

have entered an order specifically setting forth said decision and finding to the end that this partnership question may be determined by this court in advance of an investigation into the private property and financial affairs of your petitioners, or any or either of them.

7. In that the court should have found, and so ordered, adjudged and decreed that said Hecht and said Finn did not become and are not liable, as general partners or otherwise, for the debts and obligations of the said firm of Marcuse & Company, and that therefore your petitioners were not and are not members of said firm of Marcuse & Company or liable for its debts and obligations, and should have dismissed such proceedings as to your petitioners, and as to each of them.

8. In that the court should have found and so ordered, adjudged and decreed that, regardless of whether said Hecht and said Finn became and were general partners in the firm of Marcuse & Company, and as such liable for the debts and obligations of the
23 said firm, your petitioners, and each of them, did not become and are not members of said firm or partners therein, either general or special and are not liable for the debts and obligations of said firm, and should have dismissed said proceedings as to your petitioners, and as to each of them.

Wherefore, your petitioners, and each of them, feeling aggrieved because of said order of July 1, 1920; and because of the said proceedings in connection therewith and relating thereto, pray that the same may be revised in matter of law by this Honorable Court, as provided in Section 24-2 of the Bankruptcy Act and the rules of practice in such cases provided, and that the same be vacated and set aside, and for the relief herein prayed and for such other and further relief as may be just and proper.

Dated this 8th day of July, A. D. 1920. Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., George M. Studebaker, Petitioners. Harry P. Weber, George W. Miller, Attorneys for Petitioners Henry Vette, Peter M. Zuncker and Theodore Regensteiner. George T. Buckingham, Durand Defrees, Stephen E. Hurley, Attorney for Petitioners Clement Studebaker, Jr., and George M. Studebaker.

24 STATE OF ILLINOIS,
County of Cook, ss:

Henry Vette, being first duly sworn, on oath deposes and says that he is one of the petitioners named in the foregoing petition by him subscribed; that he has read the said petition and knows the contents thereof; that he knows the matters and things in said petition set forth to be true, except such matters and things as are therein stated to be on information and belief, which matters and things he verily believes to be true. Henry Vette.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid, this 8th day of July, A. D. 1920.

Witness my official seal. Walter I. Deffenbaugh, Notary Public as aforesaid. (Seal.) My commission expires June 5, 1924.

STATE OF ILLINOIS,
County of Cook, ss:

Peter M. Zuncker, being first duly sworn, on oath deposes and says that he is one of the petitioners named in the foregoing petition by him subscribed; that he has read the said petition and knows the contents thereof; that he knows the matters and things in said petition set forth to be true except such matters and things as are therein stated to be on information and belief, which matters and things he verily believes to be true. Peter M. Zuncker.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid this 8th day of July, A. D. 1920. Witness my official seal. Walter I. Defenbaugh, Notary Public as Aforesaid. (Seal.) My commission expires June 5, 1924.

25 STATE OF ILLINOIS,
County of Cook, ss:

Theodore Regensteiner, being first duly sworn, on oath deposes and says that he is one of the petitioners named in the foregoing petition by him subscribed; that he has read the said petition and knows the contents thereof; that he knows the matters and things in said petition set forth to be true, except such matters and things as are therein stated to be on information and belief, which matters and things he verily believes to be true. Theodore Regensteiner.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid, this 8th day of July, A. D. 1920. Witness my official seal. Walter I. Deffenbaugh, Notary Public as Aforesaid. (Seal.) My commission expires June 5, 1924.

STATE OF ILLINOIS,
County of Cook, ss:

George T. Buckingham, being first duly sworn, on oath deposes and says that he is attorney and agent for the petitioners Clement Studebaker, Jr., and George M. Studebaker named in the foregoing petition; that he has read the said petition and knows the contents thereof; that he knows the matters and things in said petition set forth to be true, except such matters and things as are therein stated to be on information and belief, which matters and things he verily believes to be true. George T. Buckingham.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid, this 9th day of July, A. D. 1920. Wit-

ness my official seal. Vincent O'Brien, Notary Public as Aforesaid. (Seal.) My commission expires February 13, 1924.

26 Exhibit "A" to Original Petition to Review and Revise.

Articles of agreement, made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, all of the City of Chicago, County of Cook and State of Illinois, witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, therefore, it is hereby agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co., in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the First day of July, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht and Joseph M. Finn shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be liable for any partnership debts or obligations beyond said amounts contributed by them respectively and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York

Stock Exchange and his stock exchange membership in the
27 Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations

of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this copartnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Ninety-five Thousand Dollars (\$95,000);

Joseph M. Finn the sum of Ninety-five Thousand Dollars (\$95,000).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; and the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and direction of the said Marcuse.

(8) All checks drawn upon the bank account of said firm whenever the same may be kept or maintained shall be signed by both of said general partners jointly or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly installments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said copartnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said copartnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy of Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand

29 Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly installments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from July 1st to June 30th the said sum so paid to said Morris shall exceed his partnership share in said profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sum shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said copartnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent (6%) on the cash contributed by him, and six per cent (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him toward the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall

have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

30 There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company; and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; provided that until the aforesaid Kesner bonds shall have been liquidated their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to wit: On the first day of February for the profits earned for the six months ending on the preceding December 31st, and on the first day of August for the six months ending on the preceding June 30th, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common

between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to said special partners or their nominees, without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of February of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them, made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things, by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by either of said special partners, unless said special partners shall designate different firms of auditors, in which case said Marcuse may select either of the firms of auditors so designated.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of either of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause a dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation. Upon the death of said Marcuse the said partnership shall terminate, and the affairs of the same shall be liquidated by such person or persons as may be designated by the said special partners, or the survivor thereof, or the successor or successors thereof. In case the said special partners or their successors shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title & Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

In the event of the death of either of the special partners, then the survivor of said special partners shall succeed to all the rights of both of said special partners as fully and completely as though such surviving special partner had himself contributed all of the capital so contributed by both said special partners, and shall for all purposes hereof act in the place and stead of both said special partners. In

the event of the death of both of said special partners prior to
33 the termination hereof, then the Chicago Title & Trust Company may, by the delivery to said firm of an appointment in writing, designate any person to act for all purposes hereof as the survivor of said special partners is herein authorized to act, and upon such designation, such person so designated shall forthwith be vested with all the rights and powers of a survivor of said special partners for all purposes hereof to the end of the term hereof.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In witness whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written. Ben Marcuse. (Seal.) L. H. Morris. (Seal.) Frank A. Hecht. (Seal.) Joseph M. Finn. (Seal.)

*Minnesota State Library,
St. Paul, Minn.*

Exhibit "B" to Original Petition to Review and Revise.

This instrument, made this 30th day of June, A. D. 1917, witnesseth that:

Whereas, certain Articles of Agreement, dated the 2nd day of April, A. D. 1917, (a copy of which is hereto attached marked Exhibit "A" and made a part hereof with the same effect as if in the body hereof set forth in hæc verba) have been entered into by and between Ben Marcuse and L. H. Morris, both of Chicago, Cook County, Illinois, as general partners, and Frank A. Hecht and Joseph M. Finn, also both of Chicago, Cook County, Illinois, as special partners, to engage under the firm name of Marcuse & Co. in the brokerage business for a term of five (5) years beginning with the first day of July, A. D. 1917; and

Whereas, under the terms and provisions of said Articles of Agreement, reference to which is hereby made, the undersigned, said Frank A. Hecht, and said Joseph M. Finn, by reason of their relation to said firm as special partners, are and will from time to time become, entitled to certain payments and distributions of the copartnership assets and the income, interest and profits of and upon said assets; and

Whereas, the undersigned, Frank A. Hecht and Joseph M. Finn, jointly, as Trustees, hold all and every their right, title and interest in and to the assets and the income, interest, and profits of and upon the assets now or at any time belonging to said copartnership (which said assets and said income, interest and profits thereof and therefrom, to the extent of such their right, title and interest therein and thereto, are hereinafter for convenience sometimes referred to as Trust Fund) upon the trusts and confidences hereinafter set forth:

Now, in consideration of the premises and in order to make certain said trusts and confidences, the undersigned Frank A. Hecht and Joseph M. Finn (hereinafter sometimes for convenience referred to as Trustees) declare that they jointly hold and will at all times continue to hold, all and every said Trust Fund upon the Trusts, confidences and conditions herein set forth, to-wit:

1. The Trustees direct the copartnership to pay and distribute, or cause to be paid and distributed to Chicago Title and Trust Company, an Illinois corporation having its principal place of business in Chicago, Cook County, Illinois, (hereinafter for convenience sometimes referred to as Trust Company) for the account of The Hecht-Finn Trust, all and any part or parts of the Trust Fund becoming at any time, and from time to time, payable or distributable to the Trustees by reason of the Articles of Agreement aforesaid or by way of distribution of contributed capital upon any dissolution or accounting of said special partnership.

2. Forthwith upon receipt thereof the Trust Company shall, after deducting therefrom its reasonable fees in that behalf, pay over and distribute among the registered holders of Trust Certifi-

ates, hereinafter provided for, in the proportions in which their respective share holdings stand to each other, said part or parts of

the Trust Fund paid or distributed to it for the account of
 35 The Hecht-Finn Trust. The acceptance in writing by the Trust Company of the terms and provisions of this instrument, upon any executed original hereof, shall evidence its agreement and undertaking to carry out and comply with the provisions hereof applicable to it.

3. The Trustee shall cause to be executed and issued by the Trust Company, Trust Certificates evidencing an aggregate of three hundred eighty (380) shares, each share to have an initial value of Five Hundred Dollars (\$500) and all shares to be of equal and coordinate dignity and effect. Said Trust Certificates shall be substantially in words and figures as follows:

Certificate No. —.

— Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This Certifies that — — is the owner of — shares of the initial value of Five Hundred Dollars (\$500) each of the Hecht-Finn Trust.

This Certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions hereof this Certificate is issued, to the same extent and in like manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this Certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This Certificate is transferable only upon the books of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this Certificate to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated, at Chicago, Illinois, this — day of —, A. D. 191—. Chicago Title and Trust Company, by — —, its President. Attest: — —, its Secretary.

The Trust Company shall keep a book of registry in which it shall enter over the signature of any of its officers thereto authorized the number and date of each Trust Certificate issued, the name and address of the person to whom it is issued and the number of shares evidenced thereby. Trust Certificates shall be transferable only upon surrender for cancellation and assignment in writing thereof by the registered holder thereof, and upon entry of the transfer in said book of registry, whereupon a new certificate shall be issued to the transferee by the Trust Company. The Trust Company may in all cases make all payments and distributions to the registered holders of Trust Certificates at the addresses appearing upon its book of registry and in making payments and distributions in accordance with the provisions of this paragraph the Trust Company shall be fully protected against all liability.

The original Trust Certificates shall be of even date herewith and shall be issued to the following persons for the number of shares set against their respective names:

Name.	Address.	Shares.
Frank A. Hecht.....	50
Joseph M. Finn.....	63
Rich'd Yates Hoffman	105 S. La Salle Street	100
Theodore Regensteiner	57
Henry Vette	60
Peter M. Zuncker	50

It is an express condition of the acceptance by the Trust Company of its undertakings hereunder that it shall not in any wise be held liable upon or by reason of the issuance of any Trust Certificate hereunder except for the proportionate share of the respective registered holders of the Certificates by it issued in
37 and to the net part or parts of the Trust Fund actually received by the Trust Company, nor shall the Trust Company be under any obligation or duty to take any active steps to collect or enforce payment or delivery to it of any parts of the trust fund.

4. Profits earned by said copartnership, to which the Trustees, as special partners, are entitled, shall be taken down or drawn out of such business and paid and delivered over to the Trust Company at least twice a year, to-wit: on February 1, and August 1 of each year.

5. Each and every of the holders of Trust Certificates themselves, or by duly authorized agent, may at all reasonable times, without any interference, interruption or hindrance by the Trustees or by the general partners, have access to the books of account of

said copartnership and shall, at least once a year be furnished by the Trustees with a true, just and perfect inventory and account of all of the assets of said copartnership and of all the interest, income, profits and increment of and upon the assets of said copartnership, and of all losses sustained and liabilities incurred in said copartnership business, and of all payments, receipts, disbursements and all other things by the said general partners made, received, disbursed, acted upon or suffered in said copartnership business, and shall also, on or about the first day of each month during the term of said copartnership be furnished with a monthly trial balance of, and pertaining to, the accounts of said copartnership business as and when the same is obtained by the Trustees from the general partners.

The Trustees shall appoint in writing such persons or firms as they may select to act as auditors of the business of said copartnership. From time to time they may and shall revoke such appointments and appoint such other persons or firms as the holders of certificates representing a majority of the outstanding shares shall in writing designate and require.

Should the auditors appointed under the provisions hereof at any time certify in writing to the Trustees or to the holders of Trust Certificates that the business of said copartnership is not being conducted in a safe, conservative or judicious manner, or if said auditors shall certify in writing that said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing said business, then said auditors' certificate, as between the Trustees and the holders of Certificates, and as between the Trustees and the general partners shall be conclusive and binding

38 evidence of the facts therein recited and the Trustee shall, upon the written declaration of the holders of Certificates representing a majority of the outstanding shares, cause all proper, convenient and necessary steps to be taken to dissolve said copartnership.

6. The holders of Trust Certificates shall have no right, title or interest, directory, proprietary or otherwise, in the said copartnership or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto, both legal and equitable, being vested in the Trustees, nor shall the holders of trust certificates by the acceptance thereof be construed to have assumed any liability whatsoever with respect to said trust or said copartnership, but the interest of each and every holder of Trust Certificates shall consist solely of the right to receive his proportionate share of the net part or parts of the Trust Fund from time to time payable to the Trust Company hereunder, including the proportionate share of such holder of the corpus of said fund upon any dissolution of said copartnership, and such right shall be, and be taken to be, personal property and may be assigned and transferred as such subject to the limitations herein and in said Trust Certificates set forth and contained.

7. No holder of any Trust Certificate shall have the right, either in his own name or otherwise, to institute any action at law or suit in equity for the dissolution of said copartnership, or for any relief

against said copartnership, or to protect or enforce distribution of the Trust Fund or any part thereof, except as hereinafter provided, but all such actions or suits shall be brought and maintained by the Trustees, provided, however, that said Trustees shall be under no obligations or duty to commence or maintain any such action or suit unless thereto requested by holders of Trust Certificates representing a majority of outstanding shares, and unless, also, the Trustees are reasonably indemnified by said Certificate holders, or any of them against all costs, expenses and liabilities which may be incurred in and by said action or suit. In case said request be made and such indemnity be furnished as herein provided and said Trustees, within a reasonable time thereafter, refuse or neglect to begin or maintain said action or suit, then any one or more holders of Trust Certificates may begin and maintain such action or suit in the name of the Trustees, or otherwise, as the circumstances may require.

39 8. The Trustees shall not, by virtue hereof, or of any of the terms and conditions hereof, or of any of the articles of agreement creating said copartnership, be or become personally liable on account of anything done or omitted to be done, except only that each Trustee shall be liable personally for loss or damage resulting, directly or indirectly, from his own willful or intentional acts or omissions to act. The Trustees shall be entitled to reimbursement for their reasonable expenses (including attorneys' fees) and necessary and proper disbursements made in connection with the execution and administration of the Trust herein created and the exercise and performance of their duties and powers hereunder. They shall have a lien therefor upon the Trust Fund and the part or parts of the Trust Fund from time to time turned over to the Trust Company paramount to the rights of the holders of Certificates and to any person or persons claiming by, through or under such holders. The written requisition by the Trustees, or either of them, upon the Trust Company for reimbursement on account of such expenses and disbursements shall be prima facie evidence that said expenses and disbursements have been incurred and made and are reasonable and proper, and the Trust Company shall be protected in making reimbursements to said Trustees or either of them out of the part or parts of the Trust Fund from time to time received by the Trust Company on account of said expenses and disbursements. The Trustees shall be protected in acting upon any notice, request, direction, consent, or other instrument or paper believed by them to be genuine and to be properly executed, provided such notice, request, direction, consent or other instrument or paper be authorized or within the contemplation of this instrument or the Articles of Agreement creating the copartnership.

9. In the event of the death of either of the Trustees the survivor of the Trustees shall forthwith succeed to all the rights, duties and obligations herein contained and to all of the right, title and interest of both Trustees as special partners in said copartnership, and shall act in the place and stead of both of said Trustees with

like force and effect as if such surviving Trustee had originally been the sole Trustee hereunder. In the event of the death of the surviving Trustee, then the holders of Certificates representing a majority of the shares, by an instrument or concurrent instruments in writing, signed by such certificate holders, shall designate a Successor Trustee acceptable to and approved by the general part-

ners and such Successor Trustee shall forthwith become the
40 special partner in such copartnership business in the place and stead of the deceased surviving Trustee and shall forthwith succeed to all the rights, duties and obligations herein contained and to all of the right, title and interest of the original Trustees as such partners in such copartnership with like force and effect as if such appointed Trustee had originally been the sole Trustee hereunder.

In the event that Chicago Title and Trust Company shall resign as Trust Company hereunder, a successor, which shall in every event be a corporate Trustee authorized to, and doing business in Chicago, Cook County, Illinois, shall be appointed as Successor Trust Company by instrument or concurrent instruments in writing signed by holders of certificates representing a majority of the outstanding shares. Such certificate or certificates of appointment shall be delivered to the Trustee or Trustees hereunder and shall become effective upon acceptance by the Successor Trust Company of the terms and provisions hereof relating to the Trust Company, whereupon such successor Trust Company shall be under all the obligations or duties and shall have all immunities as if it had been originally appointed Trust Company hereunder.

Chicago Title and Trust Company may resign hereunder by signifying its desire so to do by certificate in writing delivered to the Trustee or Trustees acting hereunder. The successor Trust Company shall have all and the same rights of resignation under the same terms and provisions as herein provided for Chicago Title and Trust Company.

In witness whereof, said Frank A. Hecht and said Joseph M. Finn have hereunto set their hands and seals this 30th day of June, A. D. 1917. Frank A. Hecht. (Seal.) Jos. M. Finn. (Seal.)

41 STATE OF ILLINOIS,
County of Cook, ss:

I, Henry T. Sanford, a Notary Public in and for the County of Cook and State of Illinois, do hereby certify that Frank A. Hecht and Joseph M. Finn, personally known to me to be the same persons described in and who signed the above instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 30th day of June, A. D. 1917. Henry T. Sanford, Notary Public as Aforesaid.

We, the undersigned, Ben Marcuse and L. H. Morris, general partners, and Frank A. Hecht and Joseph M. Finn, special part-

ners, in the firm of Marcuse & Co., do hereby acknowledge that we have read the foregoing instrument and are familiar with its contents and all of the terms, conditions and provisions thereof and have assented thereto and we, on behalf of said copartnership and as well individually, agree to do or cause to be done any and all acts and things, and to execute or cause to be executed **any and all documents**, writings and instruments necessary, proper or convenient to be done, caused to be done or executed, in order fully and effectually to carry out the terms and provisions of said instrument.

Witness our hands and seals this 30th day of June, A. D. 1917, Ben Marcuse (Seal), Lew H. Morris (Seal), Frank A. Hecht (Seal), Jos. M. Finn (Seal), Individually and as Copartners under the Firm Name Marcuse & Co.

Chicago Title and Trust Company, in consideration of its appointment, (however, subject to its right to resign and expressly conditioned upon its limited liability as in the above instrument provided), hereby accepts and agrees to undertake and carry out the terms and provisions of the above instrument relating to it as Trust
42 Company and its acceptance shall have all and the same full force and effect as if each said terms and provisions were now and herein specifically set forth and agreed to. Chicago Title and Trust Company, by J. A. Richardson, Its Vice President. Attest: R. W. Boddinhouse, Its Secretary. (Corporate Seal.)

Exhibit "A" to Exhibit "B" to this petition.

(Here follows in the original instrument a copy of the contract purporting to create a limited partnership, of which Exhibit "A" to this petition is a true, full and correct copy.)

"Exhibit C" to Original Petition to Review and Revise, Filed Herein on July 9, 1920.

Filed Aug. 14, 1920. Edward M. Holloway Clerk.

In the United States Circuit Court of Appeals for the Seventh Circuit.

OCTOBER TERM, A. D. 1919.

No. 2855.

In re MARCUSE & COMPANY et al., Alleged Bankrupts; HENRY Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., George M. Studebaker, Petitioners.

Harry P. Weber, George W. Miller, Counsel for petitioners Vette, Zuncker and Regensteiner.

George T. Buckingham, Donald Defrees, Stephen E. Hurley, Counsel for Petitioners Clement Studebaker, Jr. and George M. Studebaker.

43 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, begun and held at the United States Court Rooms in the City of Chicago in the division and district aforesaid on the first Monday of June, (it being the 7th day thereof) in the year of our Lord One Thousand Nine Hundred and twenty, and of the Independence of the United States of America the One Hundred and Forty-fourth year.

Present, the Honorable Kenesaw M. Landis, and the Honorable George A. Carpenter, Judges of said Court, presiding, John J. Bradley, United States Marshal for said District, and John H. R. Jamar, Clerk of said Court.

Filed Aug. 14, 1920. Edward M. Holloway, Clerk.

Be it remembered that heretofore, to wit, on the 11th day of March, A. D. 1920, there was filed in the Office of the Clerk of the District Court of the United States for the Northern District of Illinois, a Petition for adjudication in re Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank H. Hecht, co-partners doing business as Marcuse & Company, Bankrupts; said petition being in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy. No. 28339.

In the Matter of BEN MARCUSE, LEW H. MORRIS, JOSEPH H. FINN, Frank Hecht, Copartners, Doing Business as Marcuse & Company, Alleged Bankrupts.

Creditor's Petition.

(Filed Mar. 11, 1920.)

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois:

44 The petition of C. B. Giles, John Janca and I. Feigel, all of the City of Chicago, and County of Cook, in the said Northern District of Illinois, respectfully shows:

1. That Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, co-partners doing business under the trade name of Marcuse & Company, have, for the greater portion of six months next preceding the date of the filing of this petition had their principal place of business at the City of Chicago, in the County of Cook and State and District aforesaid, and were engaged in the business of buying and selling stocks and bonds and other securities; that they owe

debts to the amount of more than four Thousand Dollars (\$4,000.00) and that they are not wage earners engaged chiefly in farming or the tillage of the soil, and are subject to the provisions of the Acts of Congress relating to Bankruptcy.

2. That your petitioners are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, co-partners doing business under the trade name of Marcuse & Company, having provable claims amounting in the aggregate in excess of securities held by them, or any of them, to more than the sum of Four Thousand Dollars (\$4,000.00) and that the nature and amount of your petitioners' claims are as follows:

(a) The claim of your petitioner, C. B. Giles, is for moneys due and owing, upon which account, after allowing to said alleged Bankrupts all proper and just credits, deductions and set-offs in favor of said alleged bankrupts as against this petitioner, there is now due and owing from said alleged Bankrupts to this petitioner, the sum of Two Thousand Dollars (\$2,000.00).

(b) The claim of your petitioner, John Janca is for moneys due and owing, upon which account, after allowing to said alleged Bankrupts all proper and just credits, deductions and set-offs in favor of said alleged Bankrupts as against this petitioner, there is now due and owing from said alleged Bankrupts to this petitioner, the sum of Fifteen Hundred Dollars (\$1,500.00).

(c) The claim of your petitioner, I. Feigel, is for moneys due and owing, upon which account, after allowing to said alleged Bankrupts all proper and just credits, deductions and set-offs in favor of said alleged Bankrupts as against this petitioner, there is now due and owing from said alleged Bankrupts to this petitioner, the sum of Eight Hundred Dollars (\$800.00).

45 3. Your petitioners further respectfully represent that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, co-partners doing business under the trade name of Marcuse & Company are insolvent, and that within four months next preceding the date of this petition and the filing thereof the said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht committed an act of bankruptcy in that they did heretofore on to-wit, the 6th day of March, A. D. 1920, transfer, while insolvent, a portion of their property, to-wit, the sum of Five Thousand Five Hundred Eighty-one Dollars and Seventy Cents (\$5,581.70) to B. Lehman, one of their creditors with intent thereby to prefer such creditor over their other creditors and that the effect of such transfer was to enable to said B. Lehman, as such creditor, to obtain a greater percentage of his debt than any other of the creditors of said alleged bankrupts of the same class.

4. Your petitioners further respectfully represent that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, co-partners doing business under the trade names of Marcuse & Company are insolvent and that within four months next preceding the date of this petition and the filing thereof the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, and Frank Hecht committed another act of bankruptcy in that they did heretofore on, to-wit, the 10th day of March, A. D. 1920, transfer, while insolvent, a portion of their

property, to-wit, the sum of Two Thousand Three Hundred Thirty-eight Dollars and Sixty-five Cents (\$2,338.65) to Luetke & Carl, one of their creditors, with intent thereby to prefer such creditor over their other creditors, and that the effect of such transfer was to enable said Luetke & Carl, as such creditors, to obtain a greater percentage of their debt than any other of the creditors of said alleged Bankrupts of the same class.

Wherefore, your petitioners respectfully pray that service of this petition with a subpoena may be made upon the said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, co-partners doing business under the trade name of Marcuse & Company as provided in the Acts of Congress relating to Bankruptcy, and that they and each of them may be adjudged by the Court to be bankrupt within the purview of said Acts. C. B. Giles. John Janca. I. Feigel. Wm. Karr Steele, Attorney for Petitioners.

46 UNITED STATES OF AMERICA,
Northern District of Illinois,
State of Illinois, County of Cook, ss:

C. B. Giles, John Janca and I. Feigel, being first duly sworn, on oath severally depose and say that they are the petitioners above named and they hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true. C. B. Giles. John Janca. I. Feigel.

Subscribed and sworn to before me this 11th day of March, A. D. 1920. Henry F. Sanford, Notary Public in and for said County of Cook and State of Illinois. (Seal.)

[File endorsement omitted.]

And afterwards, on to-wit, the 12th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

Order Granting Leave to File Intervening Petition.

[Filed Mar. 12, 1920.]

[Title omitted.]

Upon motion, come the parties, by their solicitors, and the Court being fully advised in the premises, it is ordered that leave be, and hereby is, given Fred Meyer, E. H. Allen and Nathan Jacobs to file herein their intervening petition and to become co-petitioners joining in the original petition for adjudication herein.

47 That afterwards, on the same day, to-wit, on the 12th day of March, 1920, there was filed in the office of the Clerk of said Court an intervening petition in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

[Title omitted.]

Intervening Petition.

[Filed Mar. 12, 1920.]

To the Honorable Judges of the District Court of the United States
for the Northern District of Illinois, Eastern Division:

Now comes Fred Meyer, E. H. Allen and Nathan Jacobs, all of
the City of Chicago, County of Cook and State of Illinois, and re-
spectfully show:

That heretofore, on, to wit, the 11th day of March, 1920, a petition
in bankruptcy was filed by sundry creditors of said Ben Marcuse and
Lew Morris, copartners trading as Marcuse & Company, alleging
sundry acts of bankruptcy, and also alleging the insolvency of said
Ben Marcuse and Lew Morris, and praying, among other and sundry
relief, that said Ben Marcuse and Lew Morris, copartners as Marcuse
& Company, be adjudged bankrupts conformable to the acts of Con-
gress in relation to bankruptcy.

Your petitioners further represent that said Ben Marcuse and Lew
Morris, copartners as Marcuse & Company, have for the greater por-
tion of six months next preceding the date of filing this petition, had
their principal place of business at 122 S. La Salle Street, in the City
of Chicago, County of Cook and State of Illinois, and were engaged
in the business of general stock and bond brokerage in said
48 City of Chicago, and that they owe debts in excess of the sum
of \$1,000.00, and that the aggregate of the claims of your
petitions exceed the sum of \$500.00.

The nature and amounts of your petitioners' claims are as follows:

The claim of Fred Meyer amounts to the sum of at least \$20,000.00
and is based upon the following facts: The said Fred Meyer directed
said bankrupts to purchase on his behalf sundry shares of stock, and
paid thereon a certain percentage of the amount of the purchase price
of said stock, and on, to wit, the 11th day of March, 1920, the said
petitioner tendered to said bankrupts the balance of the purchase
price of said stock and demanded the surrender of said stock to your
petitioner, the value of said stock being in excess of the sum of \$20-
000.00 over and above the purchase price of said stock, and that said
bankrupts refused to comply with the demand of your petitioner in
respect to delivering said stock, to the damage of your petitioner in
the sum of \$20,000.00 which account is wholly unsecured.

The claim of E. H. Allen amounts to the sum of at least \$3,000.00 and is based upon the following facts: The said E. H. Allen directed said bankrupts to purchase on his behalf sundry shares of stock, and paid thereon a certain percentage of the amount of the purchase price of said stock, and on, to wit, the 11th day of March, 1920, the said petitioner tendered to said bankrupts the balance of the purchase price of said stock and demanded the surrender of said stock to your petitioner, the value of said stock being in excess of the sum of \$3,000.00, over and above the purchase price of said stock, and that said bankrupts refused to comply with the demand of your petitioner in respect to delivering said stock, to the damage of your petitioner in the sum of \$3,000.00, which amount is wholly unsecured.

The claim of Nathan Jacobs amounts to the sum of at least \$3,500.00 and is for money due and owing from said bankrupts to said claimant, which said bankrupts have repeatedly promised to pay, but have failed so to do, and the claim is wholly unsecured.

Your petitioners further represent that said Ben Marcuse and Lew Morris, copartners as Marcuse & Company, are insolvent, and that within four months next preceding the date of filing this intervening petition, transferred a large amount of property to a person or persons unknown to your petitioners, and the amount thereof
49 being unknown to your petitioners, for the purpose of hindering, delaying and defrauding your petitioners and other creditors of the same class.

Your petitioners further represent that said Ben Marcuse and Lew Morris within four months next preceding the date of filing the original petition and this intervening petition, and while insolvent, and on, to wit, on or about the 6th day of March, 1920, transferred and set over a large portion of their assts, to wit, the sum of \$5,581.00 to one B. Lehman, one of their creditors, with the intent to prefer said B. Lehman over and above your petitioners and other creditors of said bankrupts.

Your petitioners further represent that they expressly adopt each and every one of the allegations contained in the original petition for adjudication filed herein, and pray to be made co-petitioners in said proceeding and pray that said Ben Marcuse and Lew Morris, individually and as copartners trading as Marcuse & Company, be adjudged bankrupts pursuant to the acts of Congress in relation thereto, and that a subpoena issue in accordance with the acts of Congress in relation to bankruptcy, directed to said Ben Marcuse and Lew Morris individually and as copartners as Marcuse & Company, to show cause, if any, why they should not be adjudged bankrupts in pursuance of the acts of Congress in relation thereto. Fred Meyer, by Samuel Hirsch, His Duly Authorized Agent. E. H. Allen, By Frank R. Leonard, His Duly Authorized Agent. Nathan Jacobs, By Frank R. Leonard, His Duly Authorized Agent.

50 STATE OF ILLINOIS,
Cook County, ss:

Frank R. Leonard, being first duly sworn, deposes and says that he is the duly authorized agent of E. H. Allen, one of the petitioners

herein; that he has read the foregoing petition by him subscribed; knows the contents thereof, and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters he also believes the same to be true. Frank R. Leonard.

Subscribed and sworn to before me this 11th day of March, 1920.
L. C. Jorgensen, Notary Public. (Seal.)

STATE OF ILLINOIS,
Cook County, ss:

Samuel Hirsch, being first duly sworn, deposes and says that he is the duly authorized agent of Fred Meyer, one of the petitioners herein; that he has read the foregoing petition by him subscribed; knows the contents thereof, and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters he also believes the same to be true. Samuel Hirsch.

Subscribed and sworn to before me this 11th day of March, 1920.
L. C. Jorgensen. (Seal.)

51 STATE OF ILLINOIS,
Cook County, ss:

Frank R. Leonard, being first duly sworn, deposes and says that he is the duly authorized agent of Nathan Jacobs, one of the petitioners herein; that he has read the foregoing petition by him subscribed; knows the contents thereof, and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters he also believes the same to be true. Frank R. Leonard.

Subscribed and sworn to before me this 11th day of March, 1920.
L. C. Jorgensen, Notary Public. (Seal.)

[File endorsement omitted.]

That afterwards, on the same day, to wit, on the 12th day of March, 1920, there was filed in the office of the Clerk of said Court a Notice, in words and figures as follows:

52 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

[Title omitted.]

Notice.

[Filed Mar. 12, 1920.]

To Benjamin Marcuse, Lew H. Morris, Joseph M. Finn, and Frank
Hecht, co-partners, doing business as Marcuse & Company:

Please Take Notice That on Friday, the 12th day of March, 1920
at the opening of court or as soon thereafter as counsel can be heard,
I shall appear before his Honor, Judge Kenesaw Mountain Landis,
in the court room usually occupied by him in the Federal Building,
Chicago and shall then and there present the petition of one of the
petitioners for the appointment of a receiver and shall ask that an
order be entered in accordance with the prayer of said petition, at
which time and place you may appear if you so desire. William
Karr Steele, Attorney for Petitioning Creditors.

Received a copy of the above and foregoing Notice this 11th day
of March, 1920. Marcuse & Company, by Lew H. Morris.

[File endorsement omitted.]

53 And afterwards, on the same day to wit, on the 12th day
of March, 1920, the following order was had and entered of
record in said cause before the Honorable Kenesaw M. Landis, judge,
to wit:

[Title omitted.]

Order Appointing Receiver.

Upon reading and considering the petition of C. B. Giles for the
appointment of a receiver, and the intervening petition of Fred
Meyer, et al., the Court being fully advised in the premises finds that
it is absolutely necessary for the preservation of the estate of the
bankrupt that a receiver be appointed to take charge of and conserve
the property of the same, and it is therefore ordered that the Central
Trust Company of Illinois be, and hereby is, appointed receiver of
all the property, equitable interests, things in action and effects of
said bankrupt, and that it be vested with all the usual rights and
powers of receivers in bankruptcy upon filing a bond herein in the
penal sum of One Hundred Dollars (\$100.00).

And afterwards, on the same day to wit, on the 12th day of March,
1920, the following order was had and entered of record in said
cause before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

Order Approving Bond.

Now comes the Central Trust Company of Illinois, which has been duly appointed receiver of the estate of the above named bankrupts, and presents its appearance bond to the Court for approval, and it appearing that said bond is properly conditioned for the faithful performance of its official duties, as such receiver, and in the amount fixed by the Court, to wit, in the penal sum of \$100.00, and that the sureties thereon are good and sufficient security for the amount of said bond, it is ordered by the Court that said bond be, and the same hereby is, approved.

54 That afterwards, on the same day, to wit, on the 12th day of March, 1920, there was filed in the office of the Clerk of said Court a bond, in words and figures as follows:

District Court of the United States, Northern District of Illinois,
Eastern Division.

[Title omitted.]

Receiver's Bond.

[Filed Mar. 12, 1920.]

Know All Men By These Presents, That Central Trust Company of Illinois, of Chicago, Illinois, as Principal and The Fidelity & Casualty Company of New York, a corporation organized under the laws of the State of New York, having its principal place of business at 92 Liberty Street, New York City, as Surety, are held and firmly bound unto The United States of America in the sum of one hundred and no/100 dollars lawful money of the United States, to be paid to the said The United States of America, for which payment well and truly to be, made the said Central Trust Company of Illinois binds himself, his heirs, executors and administrators and said The Fidelity & Casualty Company of New York binds itself, its successors and assigns, jointly and severally, firmly by these Presents.

Sealed with our seals and dated the 12th day of March in the year 1920.

Whereas by an order made by Honorable Kenesaw M. Landis, United States District Judge, dated the 12th day of March, the said Central Trust Company of Illinois was appointed with the usual powers temporary Receiver of all the property, assets and effects of Ben Marcuse & Company, bankrupt, until the appointment of a trustee in bankruptcy herein.

Now Therefore the Condition of This Obligation Is Such That if the said Central Trust Company of Illinois shall faithfully discharge the duties of his trust as such Receiver and shall well and truly account for all moneys and property that shall come into his hands

and shall abide by and perform all things which he in said order is instructed to do or shall hereafter be by the court commanded to perform, then this obligation shall be void; otherwise to be in full force and effect. Central Trust Company of Illinois. T. C. Neal, Vice President. (Seal.) The Fidelity & Casualty Company of New York, by Arthur Steele, Attorney. W. W. Burgess, Asst.-Secy. (Seal.)

STATE OF ILLINOIS,
County of Cook, ss:

On this 12th day of March, 1920 before me personally comes Arthur Steele, to me known, who being by me duly sworn, deposes and says that he is the Attorney of The Fidelity & Casualty Company of New York, the corporation which is described in and which executed the annexed instrument; that he knows the corporate seal of the said corporation; that the seal affixed to the annexed instrument is the corporate seal of The Fidelity & Casualty Company of New York, and was thereto affixed by order and authority of the Board of Directors of the said company; that he signed his name as Attorney of the said company by like order and authority and that the said authority is now in full force and effect.

He further deposes and says that the said company has been duly and legally incorporated under the laws of the State of New York; that the said company has complied with and is now complying with the provisions of the Act of Congress of August 13th, 1894 allowing certain corporations to be accepted as surety on bonds and that the assets of the said company unencumbered and liable to execution exceed its claims, debts and liabilities of every nature whatsoever by more than the sum of two million five hundred thousand dollars. Dru Stephens, Notary Public. (Seal.)

App. K. M. L.

[File endorsement omitted.]

56 That on the 15th day of March, 1920, there was filed in said Court an appearance same being in words and figures following, to-wit:

[Title omitted.]

Appearance.

[Filed Mar. 15, 1920.]

The Clerk will enter our appearance as Attorneys for Central Trust Company of Illinois, Receiver heretofore appointed in above entitled cause. Foreman and Blumrosen, Attorneys for Central Trust Company of Illinois, Receiver. Dated March 12th, 1920.

[File endorsement omitted.]

That afterwards, on the same day, to-wit, on the 15th day of March, 1920, there was filed in the office of the Clerk of said Court a petition, in words and figures as follows:

57 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Petition of Harold Lachman Praying for an Order Directing the Receiver to Take Certain Assets.

[Filed Mar. 15, 1920.]

Your Petitioner, Harold Lachman, of Chicago, respectfully represents unto your Honor that Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht trading as the firm of Marcuse & Co. were organized to conduct and did conduct a brokerage business; that is to say, the business of buying and selling for others, on commission, stocks, bonds, grains, provisions, and other commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade, and various other exchanges in which securities are dealt in;

That said Harold Lachman is a creditor of the copartnership consisting of Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, trading under the firm name and style of Marcuse & Co., the alleged bankrupts herein, and brings this petition on behalf of himself and those creditors similarly situated as creditors of said estate, and respectfully represents that he is a creditor of said estate in a sum in excess of the sum of \$7,000.00 arising out of the following transactions:

Your petitioner, Harold Lachman, on, to-wit, February 13, 1920, employed the said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, trading as Marcuse & Co. as brokers for the purchase in the open market on the New York Stock Exchange of seven hundred ninety (790) shares of Studebaker Corporation, common stock; that to enable said purchase to be made by said brokers

58 your petitioner, Harold Lachman, deposited with them, the said brokers, the following securities; \$4,000 Third Liberty Loan Bonds 4¼%; \$8,000 Fourth Liberty Loan Bonds 4¼%; and \$3,000 Victory Bonds 4¾%; that on, to-wit, the said brokers purchased ten (10) shares of Studebaker Corporation, common stock, at the market price of \$88.00 per share; that, on, to-wit, February 16th, said brokers purchased seven hundred fifty (750) shares of said Studebaker Corporation, common stock, at the market price of \$88.75 per share, and that on, to-wit, February 17th, the said brokers purchased thirty (30) shares of Studebaker Corporation, common stock, at the market price of \$86.00 per share; that said Harold Lachman paid to the said brokers on, to-wit, February 13, 1920, Eight Hundred Sixty-one and 50/100 Dollars (\$861.50) the total purchase price of said ten (10) shares of Studebaker Cor-

poration, common stock; which said ten (10) shares of Studebaker Corporation, common stock, were thereupon delivered to your petitioner; that your petitioner paid on, to-wit, February 16th, Seven Hundred Fifty Dollars (\$750.00) and on, to-wit, February 17th, Seventeen Thousand, Seven Hundred Eighty Dollars (\$17,780.00) in full payment of the purchase price of two hundred (200) shares of said Studebaker Corporation, common stock, which said two hundred (200) shares of said Studebaker Corporation, common stock, were not delivered to your petitioner; that on, to-wit, March 1st, 1920, your petitioner was entitled to receive a dividend of seven per cent (7%) on the said Studebaker Corporation common stock, then held by him, which said dividend was collected by said brokers and amounted to the sum of Thirteen Hundred Eighty-two and 50/100 Dollars (\$1,382.50); that on, to-wit, March 11th, said brokers rendered to your petitioner a statement of his account, in which statement it was recited there was a balance due by your petitioner to said brokers on account of said transactions the sum of Forty-nine Thousand, Six Hundred Twenty-four and 86/100 Dollars (\$49,624.86); that thereupon your petitioner on, to-wit, the 13th day of March, tendered to said brokers, and to the Central Trust Company as Receiver of Marcuse & Company the sum of Forty-nine Thousand Six Hundred Fifty Dollars (\$49,650) and demanded immediate delivery of the said five hundred eighty (580) shares of Studebaker Corporation, common stock, and the delivery of the said collateral aforesaid, consisting of said Liberty Loan Bonds hereinabove described, and likewise on the same day made a formal written demand upon said Receiver and upon said brokers to deliver to your petitioner the said two hundred (200) shares of Studebaker Corporation, common stock, paid for by him, on, to-wit, the 26th day of February, 1920, as above set forth; that said brokers have refused to deliver to your petitioner the said securities; that at the time when said demand was made the market value of the said Studebaker Corporation common stock upon the open market was, to-wit, Seventy-six Thousand, Six Hundred Thirty-two and 50/100 Dollars (\$76,632.50) and that the value of said Liberty bonds aforesaid was approximately the sum of, to-wit, Fourteen Thousand Dollars (\$14,000), more or less; that said brokers thereupon became liable to this petitioner by reason of the refusal to deliver said five hundred eighty (580) shares of the said Studebaker Corporation, common stock, the difference between the market price of said stock, on March 13, 1920, and the said sum of Forty-nine Thousand, Six Hundred Fifty Dollars (\$49,650.00), being a sum in excess of Seventy-four Hundred Dollars, and did likewise become liable to pay to your petitioner the market price of the said Liberty Loan Bonds, aggregating more or less, the sum of Fourteen Thousand Dollars, making a total sum of in excess of Twenty-one Thousand Dollars, and in addition thereto said brokers should be required to deliver to this petitioner the said two hundred (200) shares of Studebaker Corporation, common stock, so purchased outright by your petitioner and not delivered by said brokers to him.

Your petitioner further represents that the Central Trust Company of Illinois was appointed Receiver in Bankruptcy herein, on the 12th day of March A. D. 1920, and immediately qualified as such Receiver, by filing its bond herein, which was duly approved by the court according to law; that said Receiver has taken possession of certain of the assets and property of said co-partnership; namely, the property and assets of said copartnership located in the premises at number 122 La Salle Street, in the City of Chicago, being the premises where said alleged bankrupts conducted said business of brokerage in the said City of Chicago, and has likewise taken possession of the intangible assets belonging to said co-partnership, in so far as possession thereof could be taken by said Receiver; such intangible assets consisting of the accounts receivable of said co-partnership firm, its bank accounts, and choses in action shown to be due it according to its records, and the equities and securities held by various banks and other firms and corporations as security for loans made by said banks, firms and corporations to said bankrupt.

Your petitioner further respectfully represents, however, that said Receiver has not taken possession of any of the personal property, real property, or other property and assets of the individual members of said co-partnership and more particularly has not taken possession of any of the property and assets of Joseph M. Finn and Frank A. Hecht, each of whom *are* possessed of a large amount of personal and real property located in the Northern District of Illinois, possession of which could be taken by said Receiver.

Your petitioner further represents that the said co-partnership, known under the name and style of Marcuse & Co., has held itself out as being what is known, under the laws of the State of Illinois, as a limited partnership, and as having been organized pursuant to "An Act of the General Assembly of the State of Illinois, Entitled, An Act to Revise the Law in Relation to Limited Partnerships, Approved March 18, 1874, in force July 1, 1874"; that pursuant to the provisions of said Act said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht did enter into a partnership agreement in the words and figures, following, to-wit:

[Omitted; printed p. 26.]

68 and did thereafter file in the office of the Clerk of Cook County, in Book 42, Documentary Records, "Limited Partnerships" page 156, an instrument, known as #M 38856, on July 2, 1917, in the words and figures following, to-wit:

Copy of Instrument Known as File No. 38856 in the County Clerk's Office Book 42, Documentary Record, Limited Partnerships, Page 156, Filed July 2, 1917.

This is to certify that the undersigned Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph N. Finn being desirous of forming a limited partnership under provision of an Act of the General Assem-

bly of the State of Illinois entitled an act to revise the law in relation to limited partnerships approved March 18, 1874, — enforce July 1, 1874, do hereby certify

1. That the name or firm under which said limited partnership is to be conducted shall be Marcuse & Co., the words and Co. in our firm name referring to L. H. Morris only.

2. That the general nature of the business to be transacted is the brokerage business or buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange and Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in.

3. That the names and places of residence of the general partners are Ben Marcuse, Congress Hotel, Chicago, L. H. Morris, 440 Diversey Parkway, Chicago; and the names and places of residence of the special partners are Frank A. Hecht, 2952 Lake Shore Drive, Chicago, and Joseph M. Finn, 533 Diversey Parkway, Chicago.

4. That the amount of capital stock which each special partner has contributed to the common stock, is

Frank Hecht	95,000
Joseph N. Finn	95,000

69 5. That the period at which the said partnership is to commence is July 1, 1917, and the period when it will terminate is June 30, 1922.

In the partnership articles of agreement by and between the said partners, it is stipulated that the death of any or either of them, except the death of Ben Marcuse, shall not work or cause a dissolution of said copartnership and that in the event of the death of any or either of them, except the said Marcuse, the said corporation shall continue until the termination thereof by limitation.

In Testimony Whereof we have hereunto set our hands and seals this 2nd day of April, 1917. Ben Marcuse. (Seal.) L. H. Morris. (Seal.) Frank A. Hecht. (Seal.) Joseph N. Finn. (Seal.)

STATE OF ILLINOIS,
County of Cook, ss:

I, Henry T. Sanford, a Notary Public in and for the said County in the State aforesaid, Do Hereby Certify That Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, personally known to me to be same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30th day of June, 1917. Henry T. Sanford, Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

Ben Marcuse being first duly sworn upon oath deposes and says that the aggregate amount of One Hundred and Ninety thousand dollars (\$190,000.00) has been actually in good faith contributed and applied to the same. Ben Marcuse.

Subscribed and sworn to before me this 30th day of June, A. D. 1917. Henry T. Sanford, Notary Public.

70 Your petitioner further represents that at the time when said instrument known as File M38856 and filed for record in the said office of the County Clerk of Cook County, on July 2, 1917, in said Book 42, Documentary Records, "Limited Partnerships" on page 156, an act, known as "An Act of the General Assembly of the State of Illinois, entitled An Act to Revise the Law in Relation to Limited Partnerships, Approved March 18, 1874, in force July 1, 1874," had been repealed by the Legislature of the State of Illinois; that said repeal was effected by the enactment by the said Legislature of the State of Illinois, of an Act to make uniform the law relating to limited partnerships, known as House Bill No. 303, which was filed and became the law on the 28th day of June, 1917, and which Act appears in its printed form in Laws of the State of Illinois of the year 1917, printed by authority of the General Assembly of the State of Illinois, on page 569 thereof; that in and by said Act the Limited Partnership Act theretofore in force in said State, entitled "An Act to Revise the Law in Relation to Limited Partnerships, approved March 18, 1874, and in force July 1, 1874," and was expressly repealed, except as to then existing limited partnerships.

Your petitioner further represents that said new Act so filed and becoming the law on June 28, 1917, expressly provided by Section 3 thereof that limited partnerships could not carry on and conduct a brokerage business; that the said persons, Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, trading as Marcuse & Co., did not in any manner seek to comply with the statute which was enacted with respect to Limited partnerships and which became the law on June 28, 1917; that at the time, on, to-wit, June 30, 1917, when the acknowledgment of said instrument was made by the signers thereof, before Henry T. Sanford, Notary Public, described in said instrument, and at the time, on, to-wit, June 30th, when the said Ben Marcuse described in said instrument, made and verified the affidavit in said instrument contained, (which said acknowledgment and which said affidavit were required to be made under and by virtue of the act of 1874 aforesaid, before said co-partnership could become limited under the law under said statute); and at the time when said instrument was filed for record, on, to-wit, July 2, 1917, there was not in force and effect in the state of Illinois any statutory enactment permitting a limited part-

71 nership engaged in the business of brokerage to exist under and by virtue of the laws of said State.

Your petitioner further represents that by reason of the premises of said co-partnership, so conducted by said persons trading under the name and style of Marcuse & Co., became and was a general co-partnership under the laws of the State of Illinois and each of the persons being members thereof, became and were liable for the debts and all of the obligations of said copartnership business, and the property of each and all of the members of said co-partnership became and was subject to payment of the obligations of said co-partnership; and that the liability of the property of the said Joseph M. Finn and Frank A. Hecht, described in said Articles of said co-partnership, as limited co-partners, was not limited to the amount of money set forth in said Articles of said co-partnership, to have been contributed by them to the capital of said co-partnership firm, but was in truth and in fact subject to the payment of all of the outstanding liabilities of said co-partnership in the same way and to the same extent as the property and assets of the general partners was so liable.

Your petitioner therefore represents that by virtue of the order appointing the Central Trust Company of Illinois as Receiver herein, the said receiver became entitled to seize, take and hold, for the benefit of the creditors of said estate, not only the property of the partnership entity known as Marcuse & Co., but in addition thereto, all of the individual property and assets of the individual members of said co-partnership.

Your Petitioner, Therefore, Prays that an order may be entered herein directing the said receiver to seize, take and hold, for the benefit of the creditors of said estate, all of the property and assets whatsoever, real personal and mix-d, individual and co-partnership, of all of the members of said co-partnership, namely: Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht; and that said persons and each of them be directed forthwith to surrender and deliver to your said Receiver all of the property and assets of said persons above named, both individual and co-partnership, as may now be possessed by them, so that the same may be held and administered upon by this court pursuant to law.

And Your Petitioner Further Prays that a rule to show cause be entered herein against said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, and each of them, returnable by a short day requiring said persons and each of them to show cause why they should not forthwith deliver all their property, real, personal and mixed, to the Receiver of this Court, to be held and administered upon by this court, pursuant to law.

And your petitioner will ever pray, etc. Harold Lachman.

STATE OF ILLINOIS,
County of Cook, ss:

Harold Lachman, being first duly sworn, on oath deposes and says that he has read the above and foregoing petition, subscribed by him,

Order of March 15, 1920.

that he knows the contents thereof, and that the same is true in substance and in fact. Harold Lachman.

Subscribed and sworn to before me this 15th day of March, 1920.
R. E. Simpson, Notary Public. (Seal.)

[File endorsement omitted.]

And afterwards, on the same day to-wit, on the 15th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

Order to Show Cause.

[Title omitted.]

Upon reading the petition of Harold Lachman this day filed, it is ordered that Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, and each of them, show cause before this Court on the 19th day of March, A. D. 1920, at the hour of 10.30 A. M., why they, and each of them, should not forthwith deliver to the Central Trust Company of Illinois, as receiver herein, all the property, real, personal and mixed, of them, respectively, to be held and administered by the Court pursuant to law.

73 That afterwards, on to-wit, the 16th day of March, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a notice, same being in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Notice.

[Filed Mar. 16, 1920.]

To Messrs. Rosenthal Hamill & Wormser, Stein, Mayer & David, Mayer, Austrian & Platt, Sylvanus G. Levy, William Karr Steele, Levinson & Hoffman, Moses, Rosenthal & Kennedy, Attorneys for various parties.

Please Take Notice That on Tuesday, the 16th day of March, A. D. 1920, at the hour of 2:00 o'clock, P. M. or as soon thereafter as counsel can be heard, we shall appear before the Honorable Kenesaw M. Landis, Judge of the said court in the room usually occupied

by him as a court room and move the court for leave to file an amended intervening petition making Frank Hecht and Joseph Finn parties to said proceeding and shall also ask that subpoenas issue in accordance with the prayer of said petition, at which time and place you may appear if you see fit. Gesas, Epstein & Leonard, Attorneys for Intervening Petitioning Creditors.

Received a copy of the above Notice this 16th day of March, 1920. Stein, Mayer & David. William Karr Steele. Levinson & Hoffman. M. B. Moses, Rosenthal & Kennedy.

74 A copy of the foregoing petition was left at the office of Mayer, Meyer, Austrian & Platt at 12:10 P. M. this 16th day of March, 1920 but we are not authorized to accept service for any of the parties named therein. Mayer, Meyer, Austrian & Platt.

STATE OF ILLINOIS,
Cook County, ss:

Sidney Greenfield, being first duly sworn, deposes and says that he served the foregoing Notice on Rosenthal, Hamill & Wormser by leaving a copy thereof with the stenographer in said office on the 16th day of March, 1920 at about the hour of 12:20 P. M. and that he served the foregoing Notice on Sylvanus G. Levy by leaving a copy thereof with Benjamin S. Leiser in said office on the 16th day of March, 1920 at about the hour of 12:25 P. M. Sidney Greenfield.

Subscribed and sworn to before me this 16th day of March, A. D. 1920. L. C. Jorgensen, Notary Public. (Seal.)

[File endorsement omitted.]

And afterwards, on the same day to-wit, on the 16th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order Granting Leave to Amend Intervening Petition.

On motion, and upon due notice to all parties in interest, the Court being fully advised in the premises, it is ordered that leave be, and hereby is, given the intervening petitioning creditors herein to file their supplemental amended intervening petition, adding Frank Hecht and Joseph Finn as additional alleged bankrupts, and that process issue.

75 That afterwards, on the same day, to-wit, on the 16th day of March, 1920, there was filed in the office of the Clerk of said Court a supplemental and amended intervening petition in words and figures as follows:

UNITED STATES OF AMERICA,
*Northern District of Illinois,
Eastern Division, ss:*

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

[Title omitted.]

Intervening Petition.

[Filed Mar. 16, 1920.]

To the Honorable Judges of the District Court of the United States
for the Northern District of Illinois, Eastern Division:

*The Supplemental and Amended Petition of Fred Meyer, E. H.
Allen, and Nathan Jacobs, Filed Herein by Leave of Court First
Had and Obtained.*

Now comes Fred Meyer, E. H. Allen and Nathan Jacobs, all of
the city of Chicago, County of Cook and State of Illinois, and re-
spectfully show:

That heretofore, on, to-wit: the 11th day of March, 1920, a pe-
tition in bankruptcy was filed by sundry creditors of said Ben Mar-
cuse, Lew Morris, Frank Hecht and Joseph Finn, Co-partners, trad-
ing as Marcuse & Company, alleging sundry acts of bankruptcy,
and also alleging the insolvency of said Ben Marcuse, Lew Morris,
Frank Hecht and Joseph Finn and praying, among other and sun-
dry relief, that said Ben Marcuse, Lew Morris, Frank Hecht and
Joseph Finn, co-partners as Marcuse & Company, be ad-
76 judged bankrupts conformable to the acts of Congress in re-
lation to bankruptcy.

Your petitioners further represent that said Ben Marcuse, Lew
Morris, Frank Hecht and Joseph Finn, co-partners as Marcuse &
Company, have for the greater portion of six months next preced-
ing the date of filing this petition, had their principal place of busi-
ness at 122 S. La Salle Street, in the City of Chicago, County of Cook
and State of Illinois, and were engaged in the business of general
stock and bond brokerage in said city of Chicago, and that they owe
debts in excess of the sum of \$1,000.00, and that the aggregate of
the claims of your petitioners exceeds the sum of \$500.00.

The nature and amounts of your petitioners' claims are as follows:

The claim of Fred Meyer amounts to the sum of at least \$4,000.00
and is based upon the following facts: The said Fred Meyer di-
rected said bankrupts to purchase on his behalf sundry shares of
stock and paid thereon a certain percentage of the amount of the
purchase price of said stock, and, on, to-wit, the 11th day of March,
1920, the said petitioner tendered to said bankrupts the balance of
the purchase price of said stock and demanded the surrender of said

stock to your petitioner, the value of said stock being in excess of the sum of \$4,000.00 over and above the purchase price of said stock, and that said bankrupts refused to comply with the demands of your petitioner in respect to delivering said stock, to the damage of your petitioner in the sum of \$4,000.00, which account is wholly unsecured.

The claim of E. H. Allen amounts to the sum of at least \$3,000.00, and is based upon the following facts: The said E. H. Allen directed said bankrupts to purchase on his behalf sundry shares of stock, and paid thereon a certain percentage of the amount of the purchase price of said stock, and on, to-wit, the 11th day of March, 1920, the said petitioner tendered to said bankrupts the balance of the purchase price of said stock and demanded the surrender of said stock to your petitioner, the value of said stock being in excess of the sum of \$3,000.00 over and above the purchase price of said stock, and that said bankrupts refused to comply with the demand of your petitioner in respect to delivering
77 said stock, to the damage of your petitioner in the sum of \$3,000.00, which amount is wholly unsecured.

The claim of Nathan Jacobs amounts to the sum of at least \$3,500.00 and is for money due and owing from said bankrupts to said claimant, which said bankrupts have repeatedly promised to pay, but have failed so to do, and the claim is wholly unsecured.

Your petitioners further represent that said Ben Marcuse, Lew Morris, Frank Hecht and Joseph Finn, co-partners as Marcuse & Company, are insolvent, and that within four months next preceding the date of filing this intervening petition, transferred a large amount of property to a person or persons unknown to your petitioners, and the amount thereof being unknown to your petitioners, for the purpose of hindering, delaying and defrauding your petitioners and other creditors of the same class.

Your petitioners further represent that said Ben Marcuse, Lew Morris, Frank Hecht and Joseph Finn, within four months next preceding the date of filing the original petition and this intervening petition, and while insolvent, and on, to wit, on or about the 6th day of March, 1920, transferred and set over a large amount of their assets, to wit, the sum of \$5,581.00 to one B. Lehman, one of their creditors, with the intent to prefer the said B. Lehman over and above your petitioners and other creditors of said bankrupts.

Your petitioners further represent that they expressly adopt each and every one of the allegations contained in the original petition for adjudication filed herein, and pray to be made co-petitioners in said proceeding and pray that said Ben Marcuse, Lew Morris, Frank Hecht and Joseph Finn, individually and as co-partners trading as Marcuse & Company, be adjudged bankrupts pursuant to the acts of Congress in relation thereto, and that a subpoena issue in accordance with the Acts of Congress in relation to bankruptcy, directed to said Ben Marcuse, Lew Morris, Frank Hecht and Joseph Finn individually and as co-partners as Marcuse & Company, to show cause, if any, why they should not be adjudged bankrupts in pursuance of

52 Supplemental and Amended Intervening Petition.

the acts of Congress in relation thereto, and your petitioners further pray that the intervening petition in bankruptcy by them filed herein on the 12th day of March, 1920, be amended nunc pro tunc by adding and supplying all of the amendments and additional allegations herein in this petition contained and not contained in their said original intervening petition. Fred Meyer, By Frank R. Leonard, His Duly Authorized Agent. E. H. Allen, By Frank R. Leonard, His Duly Authorized Agent. Nathan Jacobs, By Frank R. Leonard, His Duly Authorized Agent.

STATE OF ILLINOIS,
County of Cook, ss:

Frank R. Leonard, being first duly sworn, deposes and says that he is the duly authorized agent of E. H. Allen, one of the petitioners herein; that he has read the foregoing petition by him subscribed, knows the contents thereof, and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters he also believes the same to be true. Frank R. Leonard.

Subscribed and sworn to before me this 16th day of March, 1920.
L. C. Jorgensen, Notary Public. (Seal.)

STATE OF ILLINOIS,
County of Cook, ss:

Frank R. Leonard, being first duly sworn, deposes and says that he is the duly authorized agent of Fred Meyer, one of the petitioners herein; that he has read the foregoing petition by him subscribed; knows the contents thereof, and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters *he matters*, he also believes the same to be true. Frank R. Leonard.

Subscribed and sworn to before me this 16th day of March, 1920.
L. C. Jorgensen, Notary Public. (Seal.)

79 STATE OF ILLINOIS,
County of Cook, ss:

Frank R. Leonard, being first duly sworn, deposes and says that he is the duly authorized agent of Nathan Jacobs, one of the petitioners herein; that he has read the foregoing petition by him subscribed; knows the contents thereof and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters, he *also* believes the same to be true. Frank R. Leonard.

Subscribed and sworn to before me this 16th day of March, 1920.
L. C. Jorgensen, Notary Public. (Seal.)

[Filed endorsement omitted.]

And afterwards, on the same day to-wit, on the 16th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of Mar. 16, 1920.

Upon the petition of the Central Trust Company of Illinois, receiver, this day filed, it is ordered that Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, and such other witnesses as the referee in bankruptcy may, by his subpoena, at the instance of the receiver, designate, be and appear before Referee Frank L. Wean at such time and days and dates as said referee shall state, and then and there submit to an examination of and concerning the acts, condition and business of the alleged bankrupts, of and concerning the nature of the business transactions of said copartnership and said bankrupts, and each of them, the nature, extent and location of their assets, the character and amount of their liabilities, and the relationship of each individual to said firm and to each other, and produce such books and papers as shall be required by said referee, and said referee shall cause said inquiry to be also directed to the ascertainment of what individuals formed the partnership of Marcuse & Company, and what other persons, if any, had any relationship or were in anywise interested in said copartnership; and it is further ordered that said examination and investigation before said referee shall take and be given precedence of the examination heretofore directed to be made at the instance of other parties in interest; and it is further ordered that said receiver be, and he is hereby, authorized to associate Messrs. Moses, Rosenthal & Kennedy with Messrs. Foreman & Blumrosen as attorneys for said receiver.

That afterwards, on the same day, to-wit, on the 16th day of March, 1920, there was filed in the office of the Clerk of said Court an appearance in words and figures as follows:

In the District Court of the United States for the Northern District of Illinois, Eastern Division,

[Filed Mar. 16, 1920.]

[Title omitted.]

Appearance.

We hereby enter the appearance of Bruno Benjamin Marcuse (impleaded as Ben Marcuse) in above matter and our appearance as his attorneys. March 16th, 1920. Rosenthal, Hamill & Wormser.

[File endorsement omitted.]

81 And afterwards on to-wit the 16th day of March, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause an answer, the same being in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Answer of William Oscar Frazee, a Creditor.

[Filed Mar. 16, 1920.]

Now comes William Oscar Frazee, of Chicago, Illinois, in the above District, a creditor of the above alleged bankrupt, and for answer to the petition of C. B. Giles, John Janca and I. Feigel, praying that the above named alleged bankrupt be adjudicated bankrupt, respectfully shows that the said above named William Oscar Frazee is a creditor of the said above named alleged bankrupt having a provable claim against the said copartners in the sum of Two Hundred Twelve and 18/100 dollars, all of which is unsecured.

The above named creditor William Oscar Frazee upon information and belief denies that the said C. B. Giles, John Janca and I. Feigel are creditors of said alleged bankrupt, or that any or either of said alleged creditors is a creditor of the said alleged bankrupt.

Further answering this creditor, William Oscar Frazee, upon information and belief denies the allegation contained in said petition in bankruptcy that the said C. B. Giles has a provable claim against the said alleged bankrupt; and the allegation that the said John

82 Janca has a provable claim against the said alleged bankrupt, and the allegation that the said I. Feigel has a provable claim against the said alleged bankrupt, and further upon information and belief denies that the said C. B. Giles, John Janca and I. Feigel have provable claims against the above alleged bankrupt for an amount in the aggregate in excess of the value of securities held by them to Five Hundred Dollars (\$500.00) or over.

Whereupon the said William Oscar Frazee, a creditor of said alleged bankrupt prays that the said petition in bankruptcy may be dismissed. William Oscar Frazee, By E. I. Rothbart, His Duty Authorized Agent.

STATE OF ILLINOIS,
County of Cook, ss:

E. I. Rothbart, being first duly sworn deposes and says that he is the duly authorized agent of William Oscar Frazee, petitioner herein;

that he has read the foregoing petition by him subscribed, knows the contents thereof, and that the same is true except as to such matters which are stated to be upon information and belief, and as to such matters he also believes the same to be true. E. I. Rothbart.

Subscribed and sworn to before me this 16th day of March, 1920.
Charlotte D. White, Notary Public. (Seal.)

[File endorsement omitted.]

That afterwards, on to-wit, the 18th day of March, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Appearance, same being in words and figures as follows, to-wit:

83 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division,^{es}:

[Title omitted.]

Appearance.

[Filed Mar. 18, 1920.]

To the District Court of the United States for the Northern District of Illinois, Eastern Division:

We hereby enter our appearance in the above entitled cause, as attorneys for Marcuse & Co., a special or limited partnership consisting of Ben Marcuse and Lew H. Morris, as general partners, and Joseph M. Finn and Frank Hecht as special or limited partners, and for said firm as an entity only. Stein, Meyer & David, 1633 First National Bank Bldg., Chicago. March 1920.

[File endorsement omitted.]

That afterwards, on to wit, the 19th day of March, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, the separate answer of Frank A. Hecht, same being in words and figures as follows, to wit:

84 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Frank A. Hecht, One of the Defendants to the Petition of Harold Lachman, Heretofore Filed Herein, and the Rule to Show Cause Entered Thereon on the 15th Day of March, 1920.

[Filed Mar. 19, 1920.]

Now comes the said Frank A. Hecht, as defendant, and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, answers the said petition, and shows cause why he should not forthwith deliver to the Central Trust Company of Illinois, as Receiver in the matter of Ben Marcuse, et al., alleged bankrupts, doing business under the name and style of Marcuse & Company, all his property, real, personal and mixed, or any part thereof, and says:—

1. This defendant admits and states that it is true that this defendant, together with the other persons named as defendants to said petition, did on or about the 2nd day of April, 1917 enter into certain articles of agreement of limited co-partnership, substantially in the form set up as Exhibit "A" to the said petition of said Harold Lachman, but for greater certainty this defendant prays leave to refer to the original contract as actually executed by this defendant with like effect as if this defendant had quoted the same in full in this answer of this defendant in so far as said executed agreement if at all varies in detail from the purported copy thereof incorporated in said petition as an exhibit thereto.

2. This defendant further admits and says that this defendant joined with the other defendants to said petition in executing on the 2nd day of April, 1917 a certificate regarding said limited
85 partnership which was substantially in the words and figures set forth in said petition as a copy of such certificate, but for greater certainty this defendant prays leave to refer to the original of said certificate and the official record thereof with like effect as if this defendant had set forth the same in full herein in so far as the said original may vary if at all from the said copy thereof.

3. This defendant further admits and answers that the said certificate was recorded in the office of the Clerk of Cook County, Illinois, and this defendant believes that said instrument was recorded on or about the 2nd day of July, 1917, substantially as averred in said petition, but this defendant says that he did not personally record said instrument and was not advised until after the filing of said petition as to the exact details of such record.

4. This defendant further answering says that the terms of said agreement of limited partnership were carried out by this defendant and so far as this defendant is informed and believes by the said

Joseph M. Finn by the payment into the capital of said limited partnership of the sum of \$190,000, \$95,000 thereof being contributed in the name of the said Joseph M. Finn and \$95,000 thereof being contributed in the name of this defendant.

5. This defendant further answering says that the capital so contributed by this defendant and by the said Joseph M. Finn to the said co-partnership was furnished in large part by certain contributors thereto who received certain trust certificates or certificates of interest issued under and in accordance with the terms of a certain trust agreement, the original of which is deposited with the Chicago Title & Trust Company, of Chicago, Illinois, a corporation organized under the laws of Illinois, under and by virtue of the terms of which trust agreement the holders of certain certificates therein described were entitled to participate in any income or profits arising from the investment of the sum of \$190,000 in the said limited partnership, and so far as the same may be material this defendant prays leave to refer to the said original trust agreement and trust certificates therein described with like effect as if this defendant had set forth the same in full in this his answer.

6. This defendant further answering says that he entered into the said contract on or about the said 2nd day of April, 1917 well believing that the said contract constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of this defendant would be the rights

86 and obligations of a limited partner only, and not believing that any other obligations would under the terms of said contract of partnership or otherwise be incurred by this defendant, and not in any way intending to become a general partner in said partnership, or to assume any other liabilities in connection therewith, than such as were set forth in the said contract of limited partnership, and this defendant further answering says that at all times thereafter until the claim was made in these proceedings that this defendant was a general partner this defendant had no knowledge of the existence of any possible question as to the liability of this defendant being other than limited to his contribution made, as aforesaid, to the capital of said limited partnership, and this defendant respectfully shows and claims that he is a limited partner in said co-partnership, and is not a general partner and is not liable beyond the amount of the capital so contributed by him, as aforesaid, for any of the debts or obligations of the said co-partnership.

7. This defendant says that at the time of the filing of the said petition in bankruptcy this defendant was absent from the city of Chicago on account of sickness and did not return to Chicago until the night of March 16th and did not learn of any particulars of the said bankruptcy petition or of any claims that this defendant was in any way liable except as a special or limited partner, until the 17th day of March, 1920, and that immediately thereafter this defendant promptly upon learning of the existence of said claims, while still believing and now alleging that the proceedings had in accordance with the said contract of April 2, 1917, constituted this defendant only a limited partner, and not a general partner, but desiring to

avoid any question in connection therewith, and as soon as this defendant learned of the said claims and of the alleged facts upon which said claims were based, communicated with the said Joseph M. Finn the desire of this defendant to renounce all interest in the profits of the said business or other compensation by way of income therefrom, and thereupon this defendant and the said Joseph M. Finn promptly tendered in cash to Central Trust Company of Illinois, as receiver appointed by this Honorable Court of the said partnership known as Marcuse & Company, the sum of \$46,000, which was an amount larger than all the profits or other compensation paid to this defendant and the said Joseph M. Finn, and to all persons receiving any shares in said income or profits under or on account of the ownership of the said trust certificates, and at the same time delivered to the said Central Trust Company of Illinois, as such Receiver, a written instrument of tender and renunciation which was substantially in words and figures as follows:—

“Chicago, Illinois, March 17, 1920.

Central Trust Co. of Illinois, Receiver for Marcuse & Company, Alleged Bankrupts.

Gentlemen: The undersigned, Frank A. Hecht and Joseph M. Finn, who are parties to a contract of limited partnership, creating or purporting to create a limited partnership with Ben Marcuse and Lew H. Morris, acting on behalf of themselves and each acting for himself individually, and also acting as Trustees under a Trust Agreement, a copy of which is deposited with the Chicago Title & Trust Company of Chicago, Illinois, and on behalf of all the beneficiaries under said Trust Agreement, and on behalf of all persons who have received any portion of the profits of the business carried on by the said Marcuse and Company, or any other compensation by way of income from said Marcuse and Company paid on account of the investment purporting to be made by the undersigned as special partners, hereby renounce any interest in the profits of the business of Marcuse and Company, or any other compensation by way of income therefrom, and in performance of said renunciation the undersigned hereby deliver the sum of \$46,000.00 to you as Receiver for Marcuse and Company, an alleged Bankrupt, the said sum being the full amount of all interest, income and profits received by or through the undersigned in any of the capacities heretofore recited from the said firm at any time, with interest thereon from the date paid by Marcuse and Company to this date, and the undersigned acting as aforesaid hereby renounce any claim against the assets of said co-partnership arising out of the investment of an aggregate sum of \$190,000.00 as special partners in the said firm.

The undersigned have been advised that it is claimed that by mistake the alleged special partnership above created in which the undersigned were named as special partners was not organized in strict compliance with law, but the undersigned each alleges
 88 that he has believed and does believe that he became a limited partner in a limited partnership, to-wit: the said Marcuse

and Company, and did not become a general partner in said firm, and each of the undersigned alleges that he has just learned for the first time that it is claimed that the alleged mistake was made, and each of the undersigned protests that he does not in any way admit that the said limited partnership was not formed as a limited partnership in compliance with law, and carried on as a limited partnership in compliance with law, but in consideration of the alleged claim that the law regarding limited partnerships was not fully complied with, each of the undersigned hereby announces that he has elected to avail himself of the Statutes of Illinois, relating thereto and now hereby on first learning of the alleged mistake promptly renounces all interest in the profits of the business or other compensation by way of income, and tenders the sum of money hereinbefore set forth, on this 17th day of March, A. D. 1920. (Signed) Frank A. Hecht. Joseph M. Finn."

8. This defendant says that at no time since the execution of the said agreement dated April 2, 1917, has this defendant participated in the management or control of the operation or conduct of the business or transacted any part of the business of said co-partnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership under any laws at any time in force on or after the 2nd day of April, 1917, which would in any way create any legal liability on the part of this defendant as a general partner; and this defendant further says that on all letterheads and on all stationery or advertisements of said Marcuse & Company which have come to his notice or attention where the names of the partners in said partnership are given the name of this defendant has always been followed by the words "special partner," and this defendant is informed and believes and therefore alleges the fact to be that in all cases where the name of this defendant appeared as interested in the said partnership of Marcuse & Company the said interest of this defendant was always described as being the interest of a special partner.

9. This defendant further answering says that while he is advised by counsel, and therefore alleges the fact to be, that the facts alleged and stated in the said petition of the said Lachman do not as a matter of law affect the validity and binding effect of the

89 said contract of limited partnership entered into by this defendant as set forth in said petition, and therefore in pursuance of said advice alleges the fact to be that the said contract and the actions taken in pursuance thereof limit this defendant's liability to the amount of his contribution to the said special or limited partnership, this defendant says that it is provided by the terms of the Act known as the Uniform Limited Partnership Act of the State of Illinois in substance that a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not by reason of his exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly

renounces his interest in the profits of the business or other compensation by way of income, and that in said Act it is further provided that such Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect nor to affect any action or proceedings begun or right accrued before such Act takes effect, and this defendant avers that his attempt to enter into a contract which would limit his liability to the liability of a special or limited partner so that his obligation would not be in excess of the amount of capital contributed by him was an attempt made in good faith to comply with the provisions of the statutes of the State of Illinois, and that as soon as this defendant became conscious that any mistake affecting the limitation of his liability was claimed to exist he offered to repay to the Central Trust Company believed by him to represent the said limited partnership the full amount of all profits, interest and income which had been paid out by the said limited partnership as a return upon the said capital contributed by or in the name of this defendant; and this defendant says that while the said Central Trust Company as Receiver as aforesaid declined at the time to accept the said sum of money this defendant notified the said Central Trust Company that the said money was subject to its order and direction, and this defendant now holds the said money subject to the order and direction of the said Central Trust Company as receiver of the said limited partnership, and stands ready at any time when the said Central Trust Company as such receiver will

90 accept the same to deliver the full amount thereof to the said Central Trust Company or to whomsoever may be entitled to receive the same as the representative of said special or limited partnership; and this defendant says that he is advised and believes and therefore alleges the fact to be that even if some technical mistake occurred in connection with the attempt to form the said limited partnership, nevertheless under the laws of the State of Illinois applicable thereto, this defendant in view of the circumstances hereinbefore set forth, is not liable as a general partner.

10. This defendant further answering the said petition of the said Lachman says that he is not familiar with the accounts of the said limited or special partnership of Marcuse & Company, nor is this defendant familiar with the books of the co-partnership and this defendant is not advised, save by the allegations of the said petition, as to the transactions therein set forth as having occurred between the said Lachman and the said special or limited co-partnership; wherefore this defendant is unable to either admit or deny the allegations of the said petition in that regard, and leaves the petitioner to make such proof thereof as may be necessary or material in connection therewith.

11. Further answering this defendant says that he has no personal knowledge of any act of bankruptcy committed or alleged to have been committed by the said limited or special partnership, or as to the proceedings taken in connection with the petition for bankruptcy except through hearsay and through such of the files and records in this proceeding as have been brought to the knowledge of this defendant.

12. Further answering this defendant admits that he is possessed of a large amount of personal and real property located in the Northern District of Illinois, and this defendant says that he is informed and believes and therefore alleges the fact to be that the said defendant Joseph M. Finn is also possessed of a large amount of real and personal property located in the Northern District of Illinois, and this defendant says that this defendant is entirely solvent and that the value of his property and assets is very largely in excess of the amount of any personal indebtedness on his part, and he is informed and believes and therefore alleges the fact to be that the said Joseph M. Finn is also a person of very large means, and that the said Joseph M. Finn is not insolvent and that the value of his assets and property is very largely in excess of the amount of his personal indebtedness, and this defendant says that while this

91 defendant denies that either he, this defendant, or the said Joseph M. Finn is a general partner in the said firm Marcuse & Company, yet this defendant says that if this defendant and the said Joseph M. Finn, are or shall be held by law to be general partners and liable for the indebtedness of said co-partnership of Marcuse & Company, then said co-partnership is not insolvent and this defendant says that the property and assets of this defendant, and of the said Joseph M. Finn over and above the amount of any indebtedness of this defendant, and the said Joseph M. Finn are largely in excess of any amount which, added to the value of the assets of the said special partnership, would be required to pay all the indebtedness of the said co-partnership in full.

13. This defendant further says that he files this his answer to the said petition and rule to show cause for the purpose of fully advising and informing this Honorable Court of the facts set forth in this answer, but that this defendant is advised by counsel that under the petitions and pleadings in this cause and under the laws of the United States of America applicable thereto this Honorable Court is without jurisdiction in this proceeding to adjudge this defendant a bankrupt, or to determine the solvency of this defendant, or to determine the issue in this proceeding of whether this defendant is a general partner, in said co-partnership of Marcuse & Company, or has any other or different obligation in connection with said co-partnership, or to the creditors thereof than his obligation as a special partner therein as set forth in the said contracts set forth in said petition, and this defendant for the purpose of respectfully questioning the jurisdiction of this court in this proceeding specifically denies that this defendant is a bankrupt or is insolvent or is a general partner in the firm or co-partnership described in the petition in bankruptcy filed herein, and this defendant alleges that the said petition in bankruptcy originally filed in this cause, and all amendments thereof, and intervening petitions and amendments thereto, heretofore permitted allowed or made, and the said petition of the said Lachman, are not nor is any of them sufficient to confer jurisdiction upon this court to adjudge this defendant a bankrupt, or to determine his solvency, or to determine the issue of liability as a general partner in this proceeding.

Wherefore this defendant prays that the said rule to show cause may be discharged and that this Honorable Court shall order that this defendant be not required to further answer the said
92 petition and that said petition be dismissed as to this defendant for the reasons hereinbefore set forth. Frank A. Hecht, Mayer, Meyer, Austrian & Platt, Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

Frank A. Hecht, being duly sworn on oath deposes and says that he is the defendant named in the foregoing answer subscribed by him, and that he has heard said answer read and knows the contents thereof and that the statements in said answer contained are true, except as to those statements therein stated to be made upon information and belief and as to such statements this defendant believes them to be true. Frank A. Hecht.

Subscribed and sworn to before me, a Notary Public, this 19th day of March, A. D. 1920. Alfred G. Johnson, Notary Public. (Notarial Seal.)

[File endorsement omitted.]

That afterwards, on the same day, to-wit, on the 19th day of March, 1920, there was filed in the office of the Clerk of said Court the separate Answer of Joseph M. Finn, in words and figures as follows:

93 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Joseph M. Finn, One of the Defendants to the Petition of Harold Lachman, Heretofore Filed Herein, and the Rule to Show Cause Entered Thereon on the 15th Day of March, 1920.

[Filed Mar. 19, 1920.]

Now comes the said Joseph M. Finn, as defendant, and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, answers the said petition, and shows cause why he should not forthwith deliver to the Central Trust Company of Illinois as Receiver in the matter of Ben Marcuse, et al., alleged bankrupts, doing business under the name and style of Marcuse & Company, all his property, real, personal and mixed, or any part thereof, and says:

1. This defendant admits and states that it is true that this defendant, together with the other persons named as defendants to

said petition, did on or about the 2nd day of April, 1917 enter into certain articles of agreement of limited copartnership, substantially in the form set up as Exhibit "A" to the said petition of said Harold Lachman, but for greater certainty this defendant prays leave to refer to the original contract as actually executed by this defendant with like effect as if this defendant had quoted the same in full in this answer of this defendant insofar as said executed agreement if at all varies in detail from the purported copy thereof incorporated in said petition as an exhibit thereto.

2. This defendant further admitss and says that this defendant joined with the other defendants to said petition in executing on the 2nd day of April, 1917 a certificate regarding said limited partnership which was substantially in the words and figures
94 set forth in said petition as a copy of such certificate, but for greater certainty this defendant prays leave to refer to the original of said certificate and the official record thereof with like effect as if this defendant had set forth the same in full herein insofar as the said original may vary if at all from the said copy thereof.

3. This defendant further admits and answers that the said certificate was recorded in the office of the Clerk of Cook County, Illinois, and this defendant believes that said instrument was recorded on or about the 2nd day of July, 1917, substantially as averred in said petition, but this defendant says that he did not personally record said instrument and was not advised until after the filing of said petition as to the exact details of such record.

4. This defendant further answering says that the terms of said agreement of limited partnership were carried out by this defendant and so far as this defendant is informed and believes by the said Frank A. Hecht by the payment into the capital of said limited partnership of the sum of \$190,000, \$95,000, thereof being contributed in the name of the said Frank A. Hecht and \$95,000, thereof being contributed in the name of this defendant.

5. This defendant further answering says that the capital so contributed by this defendant and by the said Frank A. Hecht to the said co-partnership was furnished in large part by certain contributors thereto who received certain trust certificates or certificates of interest issued under and in accordance with the terms of a certain trust agreement, the original of which is deposited with the Chicago Title & Trust Company, of Chicago, Illinois, a corporation organized under the laws of Illinois, under and by virtue of the terms of which trust agreement the holders of certain certificates therein described were intitled to participate in any income or profits arising from the investment of the said sum of \$190,000 in the said limited partnership, and so far as the same may be material this defendant prays leave to refer to the said original trust agreement and trust certificates therein described with lika effect as if this defendant had set forth the same in full in this his answer.

6. This defendant further answering says that he entered into the said contract on or about the said 2nd day of April, 1917 well be-

believing that the said contract constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of this defendant would be the
95 rights and obligations of a limited partner only, and not believing that any other obligations would under the terms of said contract of partnership or otherwise be incurred by this defendant, and not in any way intending to become a general partner in said partnership, or to assume any other liabilities in connection therewith, than such as were set forth in the said contract of limited partnership, and this defendant further answering says that at all times thereafter until the claim was made in these proceedings that this defendant was a general partner, this defendant had no knowledge of the existence of any possible question as to the liability of this defendant being other than limited to his contribution made, as aforesaid, to the capital of said limited partnership, and this defendant respectfully shows and claims that he is a limited partner in said co-partnership, and is not a general partner and is not liable beyond the amount of the capital so contributed by him, as aforesaid, for any of the debts or obligations of the said co-partnership.

7. This defendant further says that upon learning at or about the time of the filing of the said petition of the said defendant that some claim was made that owing to some mistake in the drawing up on said partnership contract, or in the filing thereof, or in the time of filing thereof, or in the place in which said certificate was filed, or owing to some other failure to comply with the laws of Illinois this defendant was or might be subjected to claims against this defendant as a general partner, this defendant promptly upon learning of the existence of said claims, while still believing and now alleging that the proceedings had in accordance with the said contract of April 2, 1917, constituted this defendant only a limited partner, and not a general partner, but desiring to avoid any question in connection therewith, and as soon as this defendant learned of the said claims and of the alleged facts upon which said claims were based, communicated with the said Frank A. Hecht the desire of this defendant to renounce all interest in the profits of the said business or other compensation by way of income therefrom, and thereupon this defendant and the said Frank A. Hecht promptly tendered in cash to Central Trust Company of Illinois, as receiver appointed by this Honorable Court of the said partnership known as Marcuse & Company, the sum of \$46,000, which was an amount
96 larger than all the profits or other compensation paid to this defendant and the said Frank A. Hecht, and to all persons receiving any shares in said income or profits under or on account of the ownership of the said trust certificates, and at the same time delivered to the said Central Trust Company of Illinois, as such Receiver, a written instrument of tender and renunciation which was substantially in words and figures as follows:

[Omitted; Printed P. 87.]

97 8. This defendant says that at no time since the execution of the said agreement dated April 2, 1917 has this defendant participated in the management or control of the operation or conduct of the business or transacted any part of the business of said co-partnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership under any laws at any time in force on or after the 2nd day of April, 1917 which would in any way create any legal liability on the part of this defendant as a general partner; and this defendant further says that on all letterheads and on all stationery or advertisements of said Marcuse & Company which have come to his notice or attention where the names of the partners in said partnership are given the name of this defendant has always been followed by the words "special partner," and this defendant is informed and believes and therefore alleges the fact to be that in all cases where the name of this defendant appeared as interested in the said partnership of Marcuse & Company the said interest of this defendant was always described as being the interest of a special partner.

9. This defendant further answering says that while he is advised by counsel, and therefore alleges the fact to be, that the facts alleged and stated in the said petition of the said Lachman do not as a matter of law affect the validity and binding effect of the said contract of limited partnership entered into by this defendant as
98 set forth in said petition, and therefore in pursuance of said advice alleges the fact to be that the said contract and the actions taken in pursuance thereof limit this defendant's liability to the amount of his contribution to the said special or limited partnership, this defendant says that it is provided by the terms of the Act known as the Uniform Limited Partnership Act of the State of Illinois in substance that a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not by reason of his exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income, and that in said Act it is further provided that such Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect nor to affect any action or proceedings begun or right accrued before such Act takes effect, and this defendant avers that his attempt to enter into a contract which would limit his liability to the liability of a special or limited partner so that his obligation would not be in excess of the amount of capital contributed by him was an attempt made in good faith to comply with the provisions of the statutes of the State of Illinois, and that as soon as this defendant became conscious that any mistake affecting the limitation of his liability was claimed to exist he offered to repay to the Central Trust Company believed by

him to represent the said limited partnership the full amount of all profits, interest and income which had been paid out by the said limited partnership as a return upon the said capital contributed by or in the name of this defendant; and this defendant says that while the said Central Trust Company as Receiver as aforesaid declined at the time to accept the said sum of money this defendant notified the said Central Trust Company that the said money was subject to its order and direction, and this defendant now holds the said money subject to the order and direction of the said Central Trust Company as receiver of the said limited partnership, and stands ready at any time when the said Central Trust Company as such receiver will accept the same to deliver the full amount thereof to the said Central Trust Company or to whomsoever may be entitled to receive

99 the same as the representative of said special or limited partnership; and this defendant says that he is advised and believes and therefore alleges the fact to be that even if some technical mistake occurred in connection with the attempt to form the said limited partnership, nevertheless under the laws of the State of Illinois applicable thereto, this defendant in view of the circumstances hereinbefore set forth, is not liable as a general partner.

10. This defendant further answering the said petition of the said Lachman says that he is not familiar with the accounts of the said limited or special partnership of Marcuse & Company, nor is this defendant familiar with the books of the co-partnership and this defendant is not advised, save by the allegations of the said petition, as to the transactions therein set forth as having occurred between the said Lachman and the said special or limited co-partnership; wherefore this defendant is unable to either admit or deny the allegations of the said petition in that regard, and leaves the petitioner to make such proof thereof as may be necessary or material in connection therewith.

11. Further answering this defendant says that he has no personal knowledge of any act of bankruptcy committed or alleged to have been committed by the said limited or special partnership, or as to the proceedings taken in connection with the petition for bankruptcy except through hearsay and through such of the files and records in this proceeding as have been brought to the knowledge of this defendant.

12. Further answering this defendant admits that he is possessed of a large amount of personal and real property located in the Northern District of Illinois, and this defendant says that he is informed and believes and therefore alleges the fact to be that the said defendant Frank A. Hecht is also possessed of a large amount of real and personal property located in the Northern District of Illinois, and this defendant says that this defendant is entirely solvent and that the value of his property and assets is very largely in excess of the amount of any personal indebtedness on his part, and he is informed and believes and therefore alleges the fact to be that the said Frank A. Hecht is also a person of very large means, and that the said Frank A. Hecht is not insolvent and that the value of his assets and property is very largely in excess of the amount of his personal in-

100 debtedness, and this defendant says that while this defendant denies that either he, this defendant, or the said Frank A. Hecht is a general partner in the said firm of Marcuse & Company, yet this defendant says that if this defendant and the said Frank A. Hecht, are or shall be held by law to be general partners and liable for the indebtedness of said copartnership of Marcuse & Company, then said co-partnership is not insolvent and this defendant says that the property and assets of this defendant, and of the said Frank A. Hecht over and above the amount of any indebtedness of this defendant, and the said Frank A. Hecht are largely in excess of any amount which, added to the value of the assets of the said special partnership, would be required to pay all the indebtedness of the said co-partnership in full.

13. This defendant further says that he files this his answer to the said petition and rule to show cause for the purpose of fully advising and informing this Honorable Court of the facts set forth in this answer, but that this defendant is advised by counsel that under the petitions and pleadings in this cause and under the laws of the United States of America applicable thereto this Honorable Court is without jurisdiction in this proceeding to adjudge this defendant a bankrupt, or to determine the solvency of this defendant, or to determine the issue in this proceeding of whether this defendant is a general partner, in said co-partnership of Marcuse & Company, or has any other or different obligation in connection with said co-partnership, or to the creditors thereof, than his obligation as a special partner therein as set forth in the said contracts set forth in said petition, and this defendant for the purpose of respectfully questioning the jurisdiction of this court in this proceeding specifically denies that this defendant is a bankrupt or is insolvent or is a general partner in the firm or co-partnership described in the petition in bankruptcy filed herein, and this defendant alleges that the said petition in bankruptcy originally filed in this cause, and all amendments thereof, and intervening petitions and amendments thereto, heretofore permitted, allowed or made, and the said petition of the said Lachman, are not nor is any of them sufficient to confer jurisdiction upon this court to adjudge this defendant a bankrupt, or to determine his solvency, or to determine the issue of liability as a general partner in this proceeding.

Wherefore this defendant prays that the said rule to show cause may be discharged and that this Honorable Court shall order that this defendant be not required to further answer the said petition and that said petition be dismissed as to this defendant for the reasons hereinbefore set forth. Joseph M. Finn. Mayer, Meyer, Austrian & Platt, Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

Joseph M. Finn, being duly sworn on oath deposes and says that he is the defendant named in the foregoing answer subscribed by him, and that he has heard said answer read and knows the contents

thereof, and that the statements in said answer contained are true, except as to those statements therein stated to be made upon information and belief and as to such statements this defendant believes them to be true. Joseph M. Finn.

Subscribed and sworn to before me, a Notary Public, this 19th day of March, A. D. 1920. Paul M. Godehn, Notary Public. (Notarial Seal.)

[File endorsement omitted.]

That afterwards, on the same day, to-wit, on the 19th day of March, 1920, there was filed in the office of the clerk of said Court an appearance, in words and figures as follows:

102 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy. No. 28339.

In the Matter of MARCUSE & COMPANY, Bankrupt.

Appearance.

[Filed Mar. 19, 1920.]

We hereby enter the appearance of Lew Morris, one of the defendants to the petition for adjudication filed herein, and the appearance of ourselves as attorneys for said defendant. W. Knox Haynes and Michael Feinberg, Attorneys for Lew Morris.

[File endorsement omitted.]

That afterwards, on the same day, to-wit, on the 19th day of March, 1920, there was filed in the office of the Clerk of said Court the answer of Lew H. Morris, in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Answer of Lew H. Morris.

[Filed Mar. 19, 1920.]

Comes now the respondent Lew H. Morris by W. Knox Haynes and Michael Feinberg, his attorneys, and in answer to the rule heretofore entered herein upon this respondent to show cause why he should not deliver to the receiver herein possession of the personal estate and property of this respondent, says: That this respondent is willing and ready to deliver to said receiver possession of the per-

103 sonal estate and property belonging to this respondent to be held by said receiver subject to the further order of this court, and has already advised the receiver herein that he is willing to so turn over to said receiver the personal estate and property of this respondent, and that this respondent has already made definite arrangements with said receiver to turn over to him the possession of the personal estate and property belonging to this respondent.

Wherefore, the premises considered, this respondent prays that the rule to show cause heretofore entered herein be discharged. Lew H. Morris, By W. Knox Haynes and Michael Feinberg, His Attorneys.

[File endorsement omitted.]

That afterwards on the same day, to-wit, on the 19th day of March, 1920, there was filed in the office of the Clerk of said Court the answer of Bruno B. Marcuse, in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Answer of Bruno Benjamin Marcuse to the Petition of Harold Lachman, Praying for an Order Directing Receiver to Take Certain Assets.

[Filed Mar. 19, 1920.]

104 This Respondent, Bruno Benjamin Marcuse (herein impleaded as Ben Marcuse), answering the petition of Harold Lachman, heretofore filed herein and a rule to show cause issued by this court upon the said petition, says:

1. That this respondent admits that certain articles of agreement, a copy of which said articles is attached to and made a part of the said petition as Exhibit A thereof were entered into by this respondent.

2. That the firm of Marcuse & Company, mentioned in said petition, was and is a limited partnership under and by virtue of the statute in such case made and provided and that this respondent was and is a general partner therein.

3. That upon the hearing of this cause before Frank L. Wean, a referee in bankruptcy of this court, on March 17, 1920, the receiver herein by its counsel inquired whether this respondent, then a witness at the said hearing, would turn over and deliver to said receiver all the property of this respondent, excepting the property exempt under the laws of the State of Illinois, and that thereupon this re-

spondent by his counsel agreed and stipulated to turn over and deliver said property to the said receiver upon the sole condition and reservation that if this respondent should not be adjudged a bankrupt individually, the receiver should restore such property to this respondent; and this respondent further answering says that he has arranged and is ready and willing to turn over and deliver such property to the receiver upon the condition aforesaid. Bruno Benjamin Marcuse, Impleaded Herein as Ben Marcuse. Rosenthal, Hamill & Wormser, Attorneys for Respondent.

[File endorsement omitted.]

And afterwards on the same day, to-wit, on the 19th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

105

No. 28339.

In re BEN MARCUSE et al., Bankrupts.

Order of Mar. 19, 1920.

Landis, J.

This cause coming on to be heard upon the petition of the Central Trust Company of Illinois, as receiver herein, praying the instructions of this Court with respect to the tender of \$46,000.00 made to your receiver by Frank A. Hecht and Joseph M. Finn, and the Court having considered said petition, and the tender renewed in open Court, and the statements made in open court by Messrs. Frank A. Hecht and Joseph M. Finn, through Messrs. Carl Meyer and Henry Russell Platt, their attorneys, and the statements of the Central Trust Company, as receiver, through Messrs. Moses, Rosenthal & Kennedy, its attorneys, and the court now being fully advised in the premises, it is ordered that leave be, and the same is hereby, given to the Clerk of this Court, and said Clerk is directed to receive the said sum of \$46,000.00, and it is further ordered that when said sum shall have been paid to and received by the said Clerk, said Clerk shall deposit said fund in the Fort Dearborn National Bank of Chicago. And by agreement made in open court between Messrs. Frank A. Hecht and Joseph M. Finn, by and through their said counsel, with said receiver, in and through its said counsel, Messrs. Moses, Rosenthal & Kennedy, prior to the payment of said sum of \$46,000.00 to the said Clerk of this Court, it is ordered that the receipt of said sum by said Clerk shall not in anywise prejudice any claim that the said receiver or any trustee in bankruptcy, who may hereafter be appointed by this Court, or any creditor of said Marcuse & Co. may have or make against said Frank A. Hecht and Joseph M. Finn, but that said claims, if any, shall remain in force to the same extent as if the tender of said sum had been refused by the said receiver.

And afterwards, on the same day to-wit, on the 19th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

106

[Title omitted.]

Order of Mar. 19, 1920.

On motion, come the parties, by their solicitors, and the court being fully advised in the premises, it is ordered that the original petition for adjudication herein, the intervening petition, the supplemental and amended intervening petition, and the answers thereto, be, and the same hereby, are set down for hearing on March 28, 1920, at 10 o'clock A. M.

That afterwards, on to-wit, the 23rd day of March, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, the separate answer of Frank A. Hecht, same being in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Answer of Frank A. Hecht.

[Filed Mar. 23, 1920.]

The Separate Answer of Frank A. Hecht, One of the Defendants, to the Petition of C. B. Giles, John Janca, and I. Feigel, Heretofore Filed in the Above Entitled Cause.

Now comes the said Frank A. Hecht, made defendant to the said petition with Ben Marcuse, Lew H. Morris and Joseph M. Finn, described in said petition as co-partners doing business under the trade-name of Marcuse and Company; and this defendant, not submitting himself to the jurisdiction of this court nor waiving any question of jurisdiction herein, answers the said petition and says:

That this defendant is not a co-partner with the said Ben Marcuse, Lew H. Morris and Joseph M. Finn, or any of them, save and

except that this defendant, together with the said Ben Marcuse, Lew H. Morris and Joseph M. Finn, did, on or about the 2nd day of April, 1917, enter into certain articles of agreement of limited co-partnership, in and by which this defendant and the said other parties to the said contract agreed to form a limited partnership under and by virtue of the terms of which there should be contributed to the said co-partnership on behalf of this defendant the sum of ninety-five thousand dollars (\$95,000.00), and in and by which there should be contributed to the said co-partnership on behalf of the said Joseph M. Finn the further sum

107

of ninety-five thousand dollars (\$95,000.00) and further agreed, under and by virtue of the said agreement of limited co-partnership, that the said Ben Marcuse and Lew H. Morris should be general partners in said limited co-partnership, and that the said Joseph M. Finn and this defendant should be special partners and should not be in any way liable to the creditors of said co-partnership, or in any way liable to contribute anything in any way to said co-partnership beyond the said amount of ninety-five thousand dollars (\$95,000.00) each.

And this defendant says that the said co-partnership so agreed to be entered into constituted a limited co-partnership under the laws of the State of Illinois in force at the time of the execution of said contract, and that under the terms of said contract this defendant did not, nor did the said Joseph M. Finn, assume any liability beyond the amount so contributed on behalf of each of them to the said limited and special co-partnership.

And this defendant further says that on the 30th day of June, 1917, this defendant and the said Ben Marcuse, Lew H. Morris and Joseph M. Finn executed a certificate setting forth such agreements in regard to the special or limited co-partnership as were required to be set forth by the laws of the State of Illinois then in force, and to be executed and filed in the office of the County Clerk of Cook County, Illinois, and this defendant says that this defendant was informed and believed the said certificate was forthwith to be filed in the office of the said County Clerk, and that publication was to be made starting forthwith, as required by the laws of the State of Illinois.

This defendant, further answering, says that he is now informed and believes, and therefore alleges the fact to be, that the said certificate was recorded in the Office of the County Clerk of Cook County, Illinois, on or about the 2nd day of July, 1917, and
108 that immediately thereafter publication of notice of the formation of said limited or special co-partnership was made as required by the Statutes of the State of Illinois in force at the time of the execution of the said limited partnership agreement on the 2nd day of April, 1917.

And this defendant says that on the said 30th day of June, 1917, the said one hundred ninety thousand dollars (\$190,000.00), constituting the contribution to the capital of the said limited or special partnership made on behalf of this defendant and the said Joseph M. Finn was fully paid in, and that this defendant was not advised, until after the filing of the petition herein, that the said certificate of limited or special partnership had not been filed in the office of the County Clerk of Cook County, Illinois, until after the said 30th day of June, 1917.

This defendant, further answering, says that the capital so contributed by this defendant and by the said Joseph M. Finn to the said co-partnership was furnished in large part by certain contributors thereto who received certain trust certificates or certificates of interest issued under and in accordance with the terms of a certain trust agreement, the original of which is deposited with the

Chicago Title & Trust Company, of Chicago, Illinois, a corporation organized under the laws of Illinois, under and by virtue of the terms of which trust agreement the holders of certain certificates therein described were entitled to participate in any income or profits arising from the investment of the sum of One Hundred and Ninety Thousand Dollars (\$190,000), in the said limited partnership, and so far as the same may be material this defendant prays leave to refer to the said original trust agreement and trust certificates therein described with like effect as if this defendant had set forth the same in full in this his answer.

This defendant further answering says that he entered into the said contract on or about the 2nd day of April, 1917, well believing that the said contract constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of this defendant were those of a limited partner only, and not believing that any other obligations would under the terms of said contract of partnership or otherwise be incurred by this defendant, and not in any way intending to become a general partner in said partnership, or to assume any other

109 liabilities in connection therewith, than such as were set forth in the said contract of limited partnership, and this defendant further answering says that at all times thereafter until the claim was made in these proceedings that this defendant was a general partner, this defendant had no knowledge of the existence of any possible question as to the liability of this defendant being other than limited to his contribution made, as aforesaid, to the capital of said limited partnership, and this defendant respectfully shows and claims that he is a limited partner in said co-partnership, and is not a general partner and is not liable beyond the amount of the capital so contributed by him, as aforesaid, for any of the debts or obligations of the said co-partnership.

This defendant says that at the time of the filing of the said petition in bankruptcy, this defendant was absent from the City of Chicago on account of sickness and did not return to Chicago until the night of March 16th, and did not learn of any particulars of the said bankruptcy petition or of any claims that this defendant was in any way liable except as a special or limited partner until the 17th day of March, 1920, and that immediately thereafter, this defendant, promptly upon learning of the existence of said claims, while still believing and now alleging that the proceedings had in accordance with the said contract of April 2, 1917, constituted this defendant only a limited partner, and not a general partner, but desiring to avoid any question in connection therewith and as soon as this defendant learned of the said claims and of the alleged facts upon which said claims were based, communicated with the said Joseph M. Finn the desire of this defendant to renounce all interest in the profits of the said business or other compensation by way of income therefrom, and thereupon this defendant and the said Joseph M. Finn promptly tendered in cash to Central Trust Company of Illinois, as receiver appointed by this Honorable Court of the said partnership known as Marcuse & Company, the sum of Forty-six Thousand Dol-

lars (\$46,000), which was an amount larger than all the profits or other compensation paid to this defendant and the said Joseph M. Finn, and to all persons receiving any shares in said income or profits under or on account of the ownership of the said trust certificates, and at the same time delivered to the said Central Trust Company of Illinois, as such Receiver, a written instrument of tender and renunciation which was substantially in words and figures as follows:

110 [Omitted; printed p. 87.]

111 This defendant says that at no time since the execution of the said agreement dated April 2, 1917, has this defendant participated in the management or control of the operation or conduct of the business or transacted any part of the business of said co-partnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership under any laws at any time in force on or after the 2nd day of April, 1917, which would in any way create any legal liability on the part of this defendant as a general partner; and this defendant, further says that on all letter heads and on all stationery or advertisements of said Marcuse & Company which have come to his notice or attention where the names of the partners in said partnership are given the name of this defendant has always been followed by the words "special partner," and this defendant is informed and believes, and therefore alleges the fact to be, that in all cases where the name of this defendant appeared as interested in the said partnership of Marcuse & Company the said interest of this defendant was always described as being the interest of a special partner.

This defendant, further answering, says that since the filing of the petition herein, he has learned that it was claimed in said petition and that it is now claimed by sundry creditors of the said copartnership, that this defendant is a general partner in said firm, and that so far as this defendant is informed, the only basis for said contention is the claim that the said proceedings which had been taken in connection with the said limited or special partnership did not comply with the terms of an act alleged to have been adopted by

112 the Legislature of the State of Illinois and to have become effective on the first day of July, 1917, known as the Uniform Limited Partnership Act.

And this defendant says that while he is advised by counsel, and therefore alleges the fact to be, that the passage of the said Uniform Limited Partnership Act did not, as a matter of law, affect the validity of and binding effect of the said contract of limited or special partnership entered into by this defendant, as hereinbefore set forth, and that therefore the said contract, and the actions taken in pursuance thereof, limit this defendant's liability to the amount of his contribution to the said special or limited partnership, this defendant says that it is provided by the terms of the act known as the Uniform Limited Partnership Act of the State of Illinois, in substance, that a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has

become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income, and that in said act it is further provided that such act shall not be so construed as to impair the obligations of any contract existing when the act goes into effect nor to affect any action or proceedings begun or right accrued before such act takes effect, and this defendant avers that his attempt to enter into a contract which would limit his liability to the liability of a special or limited partner so that his obligation would not be in excess of the amount of capital contributed by him was an attempt made in good faith to comply with the provisions of the statutes of the State of Illinois, and that as soon as this defendant became conscious that any mistake affecting the limitation of his liability was claimed to exist he offered to repay to the Central Trust Company, believed by him to represent the said limited partnership, the full amount of all profits, interest and income which had been paid out by the said limited partnership as a return upon the said capital contributed by or in the name of this defendant; and this defendant says that while the said Central Trust Company, as receiver as aforesaid, declined at the time to accept the said sum of money, this defendant notified the said Central Trust Company that

113 the said money was subject to its order and direction, and thereafter, by order of this court, entered as of the 19th day of March, A. D. 1920, this defendant and the said Joseph M.

Finn paid the said money to the Clerk of this court, to be held under the terms of said order, to which order this defendant craves leave to refer with like effect as if he had set forth the said order in full herein, and this defendant says that the said sum of money is now held by the Clerk of this Court pursuant to said order, and this defendant says that he is advised and believes, and therefore alleges the fact to be, that even if some technical mistake occurred in connection with the attempt to form the said limited partnership, nevertheless, under the laws of the State of Illinois applicable thereto, this defendant, in view of the circumstances hereinbefore set forth is not liable as a general partner, nor is this defendant in any way liable personally upon any of the indebtedness of the said copartnership.

Further answering, this defendant says that he did not control the business of said limited or special partnership carried on under the name of Marcuse & Company and did not exercise any control thereof, and that he was not familiar with the books of said copartnership, and has no knowledge of the allegations in said petition contained as to the claims of the respective petitioners, and has no information sufficient to create a belief in the mind of this defendant as to the allegations of the said petition as to the alleged indebtedness of the said copartnership to the respective petitioners, wherefore this defendant is unable to either admit or deny the allegations of said petition in regard to such matters, and leaves the

petitioners to make such proof thereof as may be necessary or material in connection therewith.

Further answering, this defendant says that he has no personal knowledge of any act of bankruptcy committed or alleged to have been committed by the said limited or special partnership, or as to the proceedings taken in connection with the petition for bankruptcy except through hearsay, and through such of the files and records in this proceeding as have been brought to the knowledge of this defendant.

Further answering, this defendant says that he is possessed of a large amount of personal and real property located in the Northern District of Illinois, and this defendant says that he is informed and believes, and therefore alleges the fact to be, that the said defendant Joseph M. Finn is also possessed of a large amount of real and personal property located in the Northern District of Illinois,

114 and this defendant says that this defendant is entirely solvent and that the value of his property and assets is very largely in excess of the amount of any personal indebtedness on his part, and he is informed and believes, and therefore alleges the fact to be, that the said Joseph M. Finn is also a person of very large means, and that the said Joseph M. Finn is not insolvent and that the value of his assets and property is very largely in excess of the amount of his personal indebtedness, and this defendant says that while this defendant denies that either he, this defendant, or the said Joseph M. Finn is a general partner in the said firm of Marcuse & Company, yet this defendant says that if this defendant and the said Joseph M. Finn, are or shall be held by law to be general partners and liable for the indebtedness of said copartnership of Marcuse & Company, then said co-partnership is not insolvent and this defendant says that the property and assets of this defendant, and of the said Joseph M. Finn over and above the amount of any indebtedness of this defendant, and the said Joseph M. Finn, are largely in excess of any amount which, added to the value of the assets of the said special partnership, would be required to pay all the indebtedness of the said copartnership in full.

This defendant further says that he is advised by counsel, and therefore alleges the fact to be, that the said petition in this cause purports to be a petition against this defendant and the other parties named therein, under the description of "co-partners doing business under the trade name of Marcuse & Company," and that the said petition does not purport to allege that this defendant or the said Joseph M. Finn are individually insolvent, and that this defendant files this, his answer to said petition, for the purpose of fully advising and informing this Honorable Court of the facts set forth in this answer; and this defendant is advised by counsel that under the petition and pleadings in this cause, and under the laws of the United States of America applicable thereto, this Honorable Court is without jurisdiction in this proceeding to adjudge this defendant a bankrupt or to determine the solvency of this defendant, or to determine the issue in this proceeding of whether this defendant is a general partner in said co-partnership of Marcuse &

Company, or has any other or different obligation in connection with the said copartnership, or to the creditors thereof, than his obligation as a special partner therein, as set forth in the said contract of April 2, 1917, and to the said certificate executed July 2, 115 1917, and to the original of which contract and to the original of which certificate and to the recording thereof, as endorsed upon the original of said certificate, this defendant craves leave to refer with like effect as if this defendant had set forth the same in this his answer, and this defendant further craves leave to refer to and to make a part of this, his answer, certain proceedings heretofore had in this cause, to-wit: A certain petition filed on behalf of one Harold Lachman, and the answer to the said petition of Harold Lachman heretofore filed by this defendant, with like effect as if the said petition and answer had been set forth in full herein.

And this defendant, for the purpose of respectfully questioning the jurisdiction of this court in this proceeding, specifically denies that this defendant is a bankrupt, or that this defendant is insolvent, or that this defendant is a general partner in the firm of Marcuse & Company, or is a general partner with either Ben Marcuse, Lew H. Morris or Joseph M. Finn, and this defendant alleges that the said petition in bankruptcy filed by the said G. B. Giles, John Janca and I. Feigel, and any and all amendments made thereto, and any and all intervening petitions and amendments thereto heretofore permitted, allowed or made are not, nor is any of them, sufficient to confer jurisdiction upon this Court to adjudge this defendant to be a bankrupt, or to determine the solvency of this defendant, or to determine the issue of liability of this defendant as a general partner in the said firm of Marcuse & Company in this proceeding;

Wherefore, this defendant prays that this Honorable Court shall order that this defendant be not required to further answer the said petition, and said petition be dismissed as to this defendant, for the reasons hereinbefore set forth. Frank A. Hecht. Mayer, Meyer, Austrian & Platt, Counsel.

STATE OF ILLINOIS,

County of Cook, ss:

Frank A. Hecht, being duly sworn, on oath deposes and says that he is the defendant named in the foregoing answer subscribed by him, and that he has read said answer and knows the contents thereof, and that the statements in said answer contained are 116 true, except as to those statements therein alleged to be made upon information and belief, and as to such statements this affiant believes them to be true. Frank A. Hecht.

Subscribed and sworn to before me, a Notary Public in and for said County, this 23rd day of March, A. D. 1920. Paul M. Godehn.
(Seal.)

[File endorsement omitted.]

That afterwards, on the same day, to-wit, on the 23rd day of March, 1920, there was filed in the office of the Clerk of said Court the separate answer of Joseph M. Finn in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Joseph M. Finn, One of the Defendants to the Petition of C. B. Giles, John Janca, and I. Feigel, Heretofore Filed in the Above-entitled Cause.

[Filed Mar. 23, 1920.]

Now comes the said Joseph M. Finn, made defendant to the said petition with Ben Marcuse, Lew H. Morris and Frank A. Hecht, described in said petition as co-partners doing business under the trade-name of Marcuse & Company; and this defendant, not submitting himself to the jurisdiction of this court nor waiving any question of jurisdiction herein, answers the said petition and says:

117 That this defendant is not a co-partner with the said Ben Marcuse, Lew H. Morris and Frank A. Hecht, or any of them, save and except that this defendant, together with the said Ben Marcuse, Lew H. Morris and Frank A. Hecht, did, on or about the 2nd day of April, 1917, enter into certain articles of agreement of limited co-partnership, in and by which this defendant and the said other parties to the said contract agreed to form a limited partnership under and by virtue of the terms of which there should be contributed to the said co-partnership on behalf of this defendant the sum of ninety five thousand dollars (\$95,000.00), and in and by which there should be contributed to the said co-partnership on behalf of the said Frank A. Hecht the further sum of ninety-five thousand dollars (\$95,000.00) and further agreed, under and by virtue of the said agreement of limited co-partnership, that the said Ben Marcuse and Lew H. Morris should be general partners in said limited co-partnership, and that the said Frank A. Hecht and this defendant should be special partners and should not be in any way liable to the creditors of said co-partnership, or in any way liable to contribute any thing in any way to said co-partnership beyond the said amount of ninety-five thousand dollars (\$95,000.00) each.

And this defendant says that the said co-partnership so agreed to be entered into constituted a limited co-partnership under the laws of the State of Illinois in force at the time of the execution of said contract, and that under the terms of said contract this defendant did not, nor did the said Frank A. Hecht, assume any liability beyond the amount so contributed on behalf of each of them to the said limited and special co-partnership.

And this defendant further says that on the 30th day of June, 1917, this defendant and the said Ben Marcuse, Lew H. Morris and Frank A. Hecht executed a certificate setting forth such agreements in regard to the special or limited co-partnership as were required to be set forth by the laws of the State of Illinois then in force, and to be executed and filed in the office of the County Clerk of Cook County, Illinois, and this defendant says that this defendant was informed and believed that the said certificate was forthwith to be filed in the Office of the said County Clerk, and that publication was to be made starting forthwith, as required by the laws of the State of Illinois.

This defendant, further answering, says that he is now informed and believes, and therefore alleges the fact to be, that the said
118 certificate was recorded in the Office of the County Clerk of Cook County, Illinois, on or about the 2nd day of July, 1917, and that immediately thereafter publication of notice of the formation of said limited or special co-partnership was made as required by the Statutes of the State of Illinois in force at the time of the execution of the said limited partnership agreement on the 2nd day of April, 1917.

And this defendant says that on the said 30th day of June, 1917, the said one hundred and ninety thousand dollars (\$190,000.00), constituting the contribution to the capital of the said limited or special partnership made on behalf of this defendant and the said Frank A. Hecht was fully paid in, and that this defendant was not advised, until after the filing of the petition herein, that the said certificate of limited or special partnership had not been filed in the office of the County Clerk of Cook County, Illinois, until after the said 30th day of June, 1917.

This defendant, further answering says that the capital so contributed by this defendant and by the said Frank A. Hecht to the said co-partnership was furnished in large part by certain contributors thereto who received certain trust certificates or certificates of interest issued under and in accordance with the terms of a certain trust agreement, the original of which is deposited with the Chicago Title & Trust Company, of Chicago, Illinois, a corporation organized under the laws of Illinois, under and by virtue of the terms of which trust agreement the holders of certain certificates therein described were entitled to participate in any income or profits arising from the investment of the said sum of \$190,000 in the said limited partnership, and so far as the same may be material this defendant prays leave to refer to the said original trust agreement and trust certificates therein described with like effect as if this defendant had set forth the same in full in this answer.

This defendant further answering says that he entered into the said contract on or about the said 2nd day of April, 1917, well believing that the said contract constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of this defendant would be the rights and obligations of a limited partner only, and not believing that any other obligations would under the terms of said contract of partnership or

119 otherwise be incurred by this defendant, and not in any way intending to become a general partner in said partnership, or to assume any other liabilities in connection therewith, than such as were set forth in the said contract of limited partnership, and this defendant further answering says that at all times thereafter until the claim was made in these proceedings that this defendant was a general partner, this defendant had no knowledge of the existence of any possible question as to the liability of this defendant being other than limited to his contribution made, as aforesaid, to the capital of said limited partnership, and this defendant respectfully shows and claims that he is a limited partner in said co-partnership, and is not a general partner and is not liable beyond the amount of the capital so contributed by him, as aforesaid, for any of the debts or obligations of the said co-partnership.

This defendant further says that, upon learning at or about the time of the filing of a petition of one Lachman that some claim was made that owing to some mistake in the drawing up of said partnership contract, or in the filing thereof, or in the time of filing thereof, or in the place in which said certificate was filed, or owing to some other failure to comply with the laws of Illinois this defendant was or might be subjected to claims against this defendant as a general partner, this defendant, promptly upon learning of the existence of said claim, while still believing and now alleging that the proceedings had in accordance with the said contract of April 2, 1917, constituted this defendant only a limited partner, and not a general partner, but desiring to avoid any question in connection therewith, and as soon as this defendant learned of the said claims and of the alleged facts upon which said claims were based, communicated with the said Frank A. Hecht the desire of this defendant to renounce all interest in the profits of the said business or other compensation by way of income therefrom, and thereupon this defendant and the said Frank A. Hecht promptly tendered in cash to Central Trust Company of Illinois, as receiver appointed by this Honorable Court of the said partnership known as Marcuse & Company, the sum of \$46,000, which was an amount larger than all the profits or other compensation paid to this defendant and the said Frank A. Hecht, and to all person-receiving any shares in said income or profits under or on account of the ownership of the said trust certificates, and at the same time delivered to the said Central Trust Company of Illinois, as such Receiver, a written instrument of tender and renunciation which was substantially in words and figures as follows:

120

[Omitted; printed p. 87.]

121 This defendant says that at no time since the execution of the said agreement dated April 2, 1917, has this defendant participated in the management or control of the operation or conduct of the business or transacted any part of the business of said copartnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership under any laws at any time in force on or after the 2nd

day of April, 1917, which would in any way create any legal liability on the part of this defendant as a general partner; and this defendant, further says that on all letter heads and on all stationery or advertisements of said Marcuse & Company which have come to his notice or attention where the names of the partners in said partnership are given the name of this defendant has always been followed by the words "special partner," and this defendant is informed and believes, and therefore alleges the fact to be, that in all cases where the name of this defendant appeared as interested in the said partnership of Marcuse & Company the said interest of this defendant was always described as being the interest of a special partner.

This defendant, further answering, says that since the filing of the petition herein, he has learned that it was claimed in said petition and that it is now claimed by sundry creditors of the said co-partnership, that this defendant is a general partner in said firm, and that so far as this defendant is informed, the only basis for said contention is the claim that the said proceedings which had
122 been taken in connection with the said limited or special partnership did not comply with the terms of an Act alleged to have been adopted by the Legislature of the State of Illinois and to have become effective on the first day of July, 1917, known as the Uniform Limited Partnership Act.

And this defendant says that while he is advised by counsel, and therefore alleges the fact to be, that the passage of the said Uniform Limited Partnership Act did not, as a matter of law, affect the validity of and binding effect of the said contract of limited or special partnership entered into by this defendant, as hereinbefore set forth, and that therefore the said contract, and the actions taken in pursuance thereof, limit this defendant's liability to the amount of his contribution to the said special or limited partnership, this defendant says that it is provided by the terms of the Act known as the Uniform Limited Partnership Act of the State of Illinois, in substance, that a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income, and that in said Act it is further provided that such Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect nor to affect any action or proceedings begun or right accrued before such Act takes effect, and this defendant avers that his attempt to enter into a contract which would limit his liability to the liability of a special or limited partner so that his obligation would not be in excess of the amount of capital contributed by him was an attempt made in good faith to comply with the provisions of the statutes of the State of Illinois, and that as soon as this defendant became conscious that

any mistake affecting the limitation of his liability was claimed to exist he offered to repay to the Central Trust Company, believed by him to represent the said limited partnership, the full amount of all profits, interest and income which had been paid out by the said limited partnership as a return upon the said capital contributed by or in the name of this defendant; and this defendant says

123 that while the said Central Trust Company, as receiver as aforesaid, declined at the time to accept the said sum of money, this defendant notified the said Central Trust Company that the said money was subject to its order and direction, and thereafter, by order of this court, entered as of the 19th day of March, A. D. 1920, this defendant and the said Frank A. Hecht paid the said money to the Clerk of this Court, to be held under the terms of said order, to which order this defendant craves leave to refer with like effect as if he had set forth the said order in full herein, and this defendant says that the said sum of money is now held by the Clerk of this Court pursuant to said order, and this defendant says that he is advised and believes, and therefore alleges the fact to be, that even if some technical mistake occurred in connection with the attempt to form the said limited partnership, nevertheless, under the laws of the State of Illinois applicable thereto, this defendant, in view of the circumstances hereinbefore set forth is not liable as a general partner, nor is this defendant in any way liable personally upon any of the indebtedness of the said copartnership.

Further answering, this defendant says that he did not control the business of said limited or special copartnership carried on under the name of Marcuse & Company and did not exercise any control thereof, and that he was not familiar with the books of said copartnership, and has no knowledge of the allegations in said petition contained as to the claims of the respective petitioners, and has no information sufficient to create a belief in the mind of this defendant as to the allegations of the said petition as to the alleged indebtedness of the said copartnership to the respective petitioners, wherefore this defendant is unable to either admit or deny the allegations of said petition in regard to such matters, and leaves the petitioners to make such proof thereof as may be necessary or material in connection therewith.

Further answering, this defendant says that he has no personal knowledge of any act of bankruptcy committed or alleged to have been committed by the said limited or special partnership, or as to the proceedings taken in connection with the petition for bankruptcy except through hearsay, and through such of the files and records in this proceeding as have been brought to the knowledge of this defendant.

Further answering, this defendant says that he is possessed of a large amount of personal and real property located in the Northern District of Illinois, and this defendant says that he is in-
124 formed and believes, and therefore alleges the fact to be, that the said defendant Frank A. Hecht is also possessed of a large amount of real and personal property located in the Northern

District of Illinois, and this defendant says that this defendant is entirely solvent and that the value of his property and assets is very largely in excess of the amount of any personal indebtedness on his part, and he is informed and believes, and therefore alleges the fact to be, that the said Frank A. Hecht is also a person of very large means, and that the said Frank A. Hecht is not insolvent and that the value of his assets and property is very largely in excess of the amount of his personal indebtedness, and this defendant says that while this defendant denies that either he, this defendant, or the said Frank A. Hecht is a general partner in the said firm of Marcuse & Company, yet this defendant says that if this defendant and the said Frank A. Hecht, are or shall be held by law to be general partners and liable for the indebtedness of said copartnership of Marcuse & Company, then said copartnership is not insolvent and this defendant says that the property and assets of this defendant, and of the said Frank A. Hecht over and above the amount of any indebtedness of this defendant, and the said Frank A. Hecht, are largely in excess of any amount which, added to the value of the assets of the said special partnership, would be required to pay all the indebtedness of the said copartnership in full.

This defendant further says that he is advised by counsel, and therefore alleges the fact to be, that the said petition in this cause purports to be a petition against this defendant and the other parties named therein, under the description of "copartners doing business under the trade name of Marcuse & Company," and that the said petition does not purport to allege that this defendant or the said Frank A. Hecht are individually insolvent, and that this defendant files this, his answer, to said petition, for the purpose of fully advising and informing this Honorable Court of the facts set forth in this answer; and this defendant is advised by counsel that under the petition and pleadings in this cause, and under the laws of the United States of America applicable thereto, this Honorable Court is without jurisdiction in this proceeding to adjudge this defendant a bankrupt or to determine the solvency of this defendant, or to determine the issue in this proceeding of whether this defendant is a

125 general partner in said copartnership of Marcuse & Company, or has any other or different obligation in connection with the said copartnership, or to the creditors thereof, than his obligation as a special partner therein, as set forth in the said contract of April 2, 1917, and to the said certificate executed July 2, 1917, and to the original of which contract and to the original of which certificate and to the recording thereof, as endorsed upon the original of said certificate, this defendant craves leave to refer with like effect as if this defendant had set forth the same in this his answer, and this defendant further craves leave to refer to and to make a part of this, his answer, certain proceedings heretofore had in this cause, to wit: A certain petition filed on behalf of one Harold Lachman, and the answer to the said petition of Harold Lachman heretofore filed by this defendant, with like effect as if the said petition and answer had been set forth in full herein.

And this defendant, for the purpose of respectfully questioning the jurisdiction of this court in this proceeding, specifically denies that this defendant is a bankrupt, or that this defendant is insolvent, or that this defendant is a general partner in the firm of Marcuse & Company, or is a general partner with either Ben Marcuse, Lew H. Morris or Frank A. Hecht, and this defendant alleges that the said petition in bankruptcy filed by the said C. B. Giles, John Janca and I. Feigel, and any and all amendments made thereto, and any and all intervening petitions and amendments thereto heretofore permitted, allowed or made are not, nor is any of them, sufficient to confer jurisdiction upon this Court to adjudge this defendant to be a bankrupt, or to determine the solvency of this defendant, or to determine the issue of liability of this defendant, or to determine the issue of liability of this defendant as a general partner in the said firm of Marcuse & Company in this proceeding.

Wherefore, this defendant prays that this Honorable Court shall order that this defendant be not required to further answer the said petition, and the said petition be dismissed as to this defendant, for the reasons hereinbefore set forth. Joseph M. Finn. Meyer, Mayer, Austrian & Platt, Counsel.

126 STATE OF ILLINOIS,
County of Cook, ss:

Joseph M. Finn, being duly sworn, on oath deposes and says that he is the defendant named in the foregoing answer subscribed by him, and that he has read said answer and knows the contents thereof, and that the statements in said answer contained are true, except as to those statements therein alleged to be made upon information and belief, and as to such statements this affiant believes them to be true. Frank A. Hecht.

Subscribed and sworn to before me, a Notary Public in and for said County, this 23rd day of March, A. D. 1920. Paul M. Godehn. (Seal.)

[File endorsement omitted.]

And afterwards, on the same day to-wit, on the 23rd day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of Mar. 23, 1920.

On motion, come the parties, by their solicitors, and the Court being fully advised in the premises, it is ordered that Lew H. Morris and Ben Marcuse have until March 31, 1920, within which to answer the petition for adjudication herein.

That afterwards, on to-wit, the 24th day of March, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, the separate answer of Joseph M. Finn, same being in words and figures as follows, to-wit:

127 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Joseph M. Finn to the Intervening Petition of Fred Mayer, E. H. Allen, and Nathan Jacobs, as Amended.

[Filed Mar. 24, 1920.]

Now comes Joseph M. Finn, made defendant to the said intervening petition with Ben Marcuse, Lew H. Morris and Frank A. Hecht, described in said petition as co-partners doing business as Marcuse and Company; and this defendant, not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction therein, answers the said intervening petition as amended, and says:

That this defendant is not a co-partner with the said Ben Marcuse, Lew H. Morris and Frank A. Hecht, or any of them, save and except that this defendant, together with the said Ben Marcuse, Lew H. Morris and Frank A. Hecht, did, on or about the 2nd day of April, 1917, enter into certain articles of agreement of limited co-partnership, in and by which this defendant and the said other parties to the said contract agreed to form a limited partnership under and by virtue of the terms of which there should be contributed to the said co-partnership on behalf of this defendant the sum of ninety-five thousand dollars, (\$95,000.00), and there should be contributed to the said co-partnership on behalf of the said Frank A. Hecht the further sum of ninety-five thousand dollars (\$95,000.00), and it was further agreed, under and by virtue of the said agreement of limited co-partnership, that the said Ben Marcuse and Lew H. Morris should be general partners in said limited co-partnership, and that the said Frank A. Hecht and this defendant should be special or limited partners and should not be in any way liable to the creditors of said co-partnership, or in any way liable to contribute anything in any way to said co-partnership beyond the said amount of
128 ninety-five thousand dollars (\$95,000.00) each.

And this defendant says that the said co-partnership so agreed to be entered into constituted a limited co-partnership under the laws of the State of Illinois in force at the time of the execution of said contract, and that under the terms of said contract this defendant did not, nor did the said Frank A. Hecht, assume any liability beyond the amount so contributed on behalf of each of them to the said limited and special co-partnership.

And this defendant further says that on the 30th day of June, 1917, this defendant and the said Ben Marcuse, Lew H. Morris and

Frank A. Hecht executed a certificate to be filed in the office of the County Clerk of Cook County, Illinois, setting forth such agreements in regard to the special or limited co-partnership as were required to be set forth by the laws of the State of Illinois then in force, and this defendant says that this defendant was informed and believed that the said certificate was forthwith filed in the Office of the said County Clerk, and that publication was made starting forthwith, all as required by the laws of the State of Illinois.

This defendant, further answering, says that he is now informed and believes, and therefore alleges the fact to be, that the said certificate was recorded in the office of the County Clerk of Cook County, Illinois, on or about the 2nd day of July, 1917, and that immediately thereafter publication of notice of the formation of said limited or special co-partnership was made as required by the Statutes of the State of Illinois in force at the time of the execution of the said limited partnership agreement on the 2nd day of April, 1917.

And this defendant says that on the 30th day of June, 1917, the said one hundred and ninety thousand dollars (\$190,000.00), constituting the contribution to the capital of the said limited or special partnership made on behalf of this defendant and the said Frank A. Hecht, was fully paid in, and that this defendant was not advised, until after the filing of the original petition herein, that the said certificate of limited or special partnership had not been filed in the office of the County Clerk of Cook County, Illinois, until after the said 30th day of June, 1917.

This defendant, further answering, says that the capital so contributed by this defendant and by the said Frank A. Hecht
129 to the said co-partnership was furnished in large part by certain contributors thereto who received certain trust certificates or certificates of interest issued under and in accordance with the terms of a certain trust agreement, the original of which is deposited with the Chicago Title & Trust Company, of Chicago, Illinois, a corporation organized under the laws of Illinois, under and by virtue of the terms of which trust agreement the holders of certain certificates therein described were entitled to participate in any income or profits arising from the investment of the said sum of \$190,000.00 in the said limited partnership, and so far as the same may be material this defendant prays leave to refer to the said original trust agreement and trust certificate therein described with like effect as if this defendant had set forth the same in full in this answer.

This defendant further answering says that he entered into the said contract on or about the said 2nd day of April, 1917, well believing that the said contract constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of this defendant would be the rights and obligations of a limited partner only, and not believing that any other obligations would under the terms of said contract of partnership or otherwise be incurred by this defendant, and not in any way intending to become a general partner in said partnership, or to assume any other liabilities in connection therewith, than such as

were set forth in the said contract of limited partnership, and this defendant further answering says that at all times thereafter until the claim was made in these proceedings that this defendant was a general partner, this defendant had no knowledge of the existence of any possible question as to the liability of this defendant being other than limited to his contribution made, as aforesaid, to the capital of said limited partnership, and this defendant respectfully shows and claims that he is a limited partner in said co-partnership, and is not a general partner and is not liable beyond the amount of the capital so contributed by him, as aforesaid, for any of the debts or obligations of the said co-partnership.

This defendant further says that, upon learning at or about the time of the filing of a petition of one Lachman that some claim was made that owing to some mistake in the drawing up of said partnership contract, or in the filing thereof, or in the time of filing thereof, or in the place in which said certificate was filed, or
130 owing to some other failure to comply with the laws of Illinois this defendant was or might be subjected to claims against this defendant as a general partner, this defendant, promptly upon learning of the existence of said claim, while still believing and now alleging that the proceedings had in accordance with the said contract of April 2, 1917, constituted this defendant only a limited partner, and not a general partner, but desiring to avoid any question in connection therewith, and as soon as this defendant learned of the said claims and of the alleged facts upon which said claims were based, communicated with the said Frank A. Hecht the desire of this defendant to renounce all interest in the profits of the said business or other compensation by way of income therefrom, and thereupon this defendant and the said Frank A. Hecht promptly tendered in cash to Central Trust Company of Illinois, as receiver appointed by this Honorable Court of the said partnership known as Marcuse & Company, the sum of \$46,000, which was an amount larger than all the profits or other compensation paid to this defendant and the said Frank A. Hecht, and to all persons receiving any shares in said income or profits under or on account of the ownership of the said trust certificates, with interest thereon added from the date of such respective payments, and at the same time delivered to the said Central Trust Company of Illinois, as such Receiver, a written instrument of tender and renunciation which was substantially in words and figures as follows:

[Omitted; printed p. 87.]

131 This defendant says that at no time since the execution of
the said agreement dated April 2, 1917 has this defendant
132 participated in the management or control of the operation
or conduct of the business or transacted any part of the business of said co-partnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership under any laws at any time in force on or after the 2nd day of April, 1917, which would in any way create any

legal liability on the part of this defendant as a general partner; and this defendant further says that on all letterheads and on all stationery or advertisements of said Marcuse & Company which have come to his notice or attention where the names of the partners in said partnership are given the name of this defendant has always been followed by the words "special partner," and this defendant is informed and believes, and therefore alleges the fact to be, that in all cases where the name of this defendant appeared as interested in the said partnership of Marcuse & Company the said interest of this defendant was always described as being the interest of a special partner.

This defendant, further answering, says that since the filing of certain petitions herein, he has learned that it was claimed in said petitions and that it is now claimed by sundry creditors of the said co-partnership, that this defendant is a general partner in said firm, and that so far as this defendant is informed, the only basis for said contention is the claim that the said proceedings which had been taken in connection with the said limited or special partnership did not comply with the terms of an Act alleged to have been adopted by the Legislature of the State of Illinois and to have become effective on the first day of July, 1917, known as the Uniform Limited Partnership Act.

And this defendant says that while he is advised by counsel, and therefore alleges the fact to be, that the passage of the said Uniform Limited Partnership Act did not, as a matter of law, affect the validity of and binding effect of the said contract of limited or special partnership entered into by this defendant, as hereinbefore set forth, and that therefore the said contract, and the actions taken in pursuance thereof, limit this defendant's liability to the amount of his contribution to the said special or limited partnership, yet this defendant says that it is provided by the terms of the Act known as the Uniform Limited Partnership Act of the State of Illinois, in substance, that a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing
133 that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income, and that in said Act it is further provided that such Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect nor to affect any action or proceedings begun or right accrued before such Act takes effect, and this defendant avers that his attempt to enter into a contract which would limit his liability to the liability of a special or limited partner so that his obligation would not be in excess of the amount of capital contributed by him was an attempt made in good faith to comply with the provisions of the statutes of the State of Illinois, and that as soon as this defendant became conscious that any mistake affecting the limitation of his liability was

claimed to exist he offered to repay to the Central Trust Company, believed by him to represent the said limited partnership, the full amount of all profits, interest and income which had been paid out by the said limited partnership as a return upon the said capital contributed by or in the name of this defendant; and this defendant says that while the said Central Trust Company, as receiver, as aforesaid, declined at the time to accept the said sums of money, this defendant notified the said Central Trust Company that the said money was subject to its order and direction, and thereafter, by order of this court, entered as of the 19th day of March, A. D. 1920, this defendant and the said Frank A. Hecht paid the said money to the Clerk of this Court, to be held under the terms of said order, to which order this defendant craves leave to refer with like effect as if he had set forth the said order in full herein, and this defendant says that the said sum of money is now held by the Clerk of this Court pursuant to said order, and this defendant says that he is advised and believes, and therefore alleges the fact to be, that even if some technical mistake occurred in connection with the attempt to form the said limited partnership, nevertheless, under the laws of the State of Illinois applicable thereto, this defendant, in view of the circumstances hereinbefore set forth is not liable as a general partner, nor is this defendant in any way liable personally upon any
134 of the indebtedness of the said co-partnership.

Further answering, this defendant says that he did not control the business of said limited or special co-partnership carried on under the name of Marcuse & Company and did not exercise any control thereof, and that he was not familiar with the books of said co-partnership, and has no knowledge of the allegations in said intervening petition contained as to the claims of the respective petitioners, and has no information sufficient to create a belief in the mind of this defendant as to the allegations of the said petition as to the alleged indebtedness of the said co-partnership to the respective petitioners, wherefore this defendant is unable to either admit or deny the allegations of said petition in regard to such matters, and leaves the petitioners to make such proof as may be necessary or material in connection therewith.

Further answering, this defendant says that he has no personal knowledge of any act of bankruptcy committed or alleged to have been committed by the said limited or special partnership, or as to the proceedings taken in connection with the petition for bankruptcy except through hearsay, and through such of the files and records in this proceeding as have been brought to the knowledge of this defendant.

Further answering, this defendant says that he is possessed of a large amount of personal and real property located in the Northern District of Illinois, and this defendant says that he is informed and believes, and therefore alleges the fact to be, that the said defendant Frank A. Hecht is also possessed of a large amount of real and personal property located in the Northern District of Illinois, and this defendant says that this defendant is entirely solvent and that the value of his property and assets is very largely in excess of the

amount of any personal indebtedness on this part, and he is informed and believes, and therefore alleges the fact to be, that the said Frank A. Hecht is also a person of very large means, and that the said Frank A. Hecht is not insolvent and that the value of his assets and property is very largely in excess of the amount of his personal indebtedness, and this defendant says that while this defendant denies that either he, this defendant, or the said Frank A. Hecht is a general partner in the said firm of Marcuse & Company, yet this defendant says that if this defendant and the said Frank A.

135 Hecht, are or shall be held by law to be general partners and liable for the indebtedness of said co-partnership of Marcuse & Company, then said co-partnership is not insolvent and this defendant says that the property and assets of this defendant, and of the said Frank A. Hecht over and above the amount of any indebtedness of this defendant, or the said Frank A. Hecht, are largely in excess of any amount which, added to the value of the assets of the said special partnership, would be required to pay all the indebtedness of the said co-partnership in full.

This defendant further says that he is advised by counsel, and therefore alleges the fact to be, that the said petition in this cause purports to be a petition against this defendant and the other parties named therein, under the description of "co-partners doing business under the trade name of Marcuse & Company," and that the said petition does not purport to allege that this defendant or the said Frank A. Hecht are individually insolvent, and that this defendant files this, his answer, to said petition, for the purpose of fully advising and informing this Honorable Court of the facts set forth in this answer; and this defendant is advised by counsel that under the petition and pleadings in this cause, and under the laws of the United States of America applicable thereto, this Honorable Court is without jurisdiction in this proceeding to adjudge this defendant a bankrupt or to determine the solvency of this defendant, or to determine the issue in this proceeding of whether this defendant is a general partner in said co-partnership of Marcuse & Company, or has any other or different obligation in connection with the said co-partnership, or to the creditors thereof, than his obligation as a special partner therein, as set forth in the said contract of April 2, 1917, and in the said certificate executed July 2, 1917, to the original of which contract and to the original of which certificate and to the recording thereof, as endorsed upon the original of said certificate, this defendant craves leave to refer with like effect as if this defendant had set forth the same at length in this his answer, and this defendant further craves leave to refer to and to make a part of this, his answer, certain proceedings heretofore had in this cause, to-wit: a certain petition filed on behalf of one Harold Lachman, and the answer to the said petition of Harold Lachman heretofore filed by this defendant, with like effect as if the said petition and answer had been set forth in full herein.

136 And this defendant, for the purpose of respectfully questioning the jurisdiction of this court in this proceeding, specifically denies that this defendant is a bankrupt, or that this

in the firm of Marcuse & Company, or is a general partner with either Ben Marcuse, Lew H. Morris or Frank A. Hecht, and this defendant alleges that the said intervening petition in bankruptcy filed by the said Fred Mayer, E. H. Allen and Nathan Jacobs, and any and all amendments made thereto, and the original petition filed herein by G. B. Giles, et al., and any and all intervening petitions and amendments thereto heretofore permitted, allowed or made are not, nor is any of them, sufficient to confer jurisdiction upon this Court to adjudge this defendant to be a bankrupt, or to determine the solvency of this defendant, or to determine the issue of liability of this defendant as a general partner in the said firm of Marcuse & Company in this proceeding;

Wherefore, this defendant prays that this Honorable Court shall order that this defendant be not required to further answer the said intervening petition, and that the said petition be dismissed as to this defendant, for the reasons hereinbefore set forth. Joseph M. Finn. Mayer, Meyer, Austrian & Platt, Counsel.

STATE OF ILLINOIS,

County of Cook, ss:

Joseph M. Finn, being duly sworn, on oath deposes and says that he is the defendant named in the foregoing answer subscribed by him, and that he has read said answer and knows the contents thereof, and that the statements in said answer contained are true, except as to those statements therein alleged to be made upon information and belief, and as to such statements this affiant believes them to be true. Joseph M. Finn.

Subscribed and sworn to before me a Notary Public in and for said County, this 23rd day of March, A. D. 1920. Paul M. Godehn.
(Seal.)

[File endorsement omitted.]

137 That afterwards, on the same day, to-wit, on the 24th day of March, 1920, there was filed in the office of the Clerk of said Court, the separate answer of Frank A. Hecht, in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Frank A. Hecht to the Intervening Petition of Fred Mayer, E. H. Allen, and Nathan Jacobs, as Amended.

[Filed Mar. 24, 1920.]

Now comes Frank A. Hecht, made defendant to the said intervening petition with Ben Marcuse, Lew H. Morris and Joseph M. defendant is insolvent, or that this defendant is a general partner

Finn, described in said petition as co-partners doing business as Marcuse and Company; and this defendant, not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction therein, answers the said intervening petition as amended, and says:

That this defendant is not a co-partner with the said Ben Marcuse, Lew H. Morris and Joseph M. Finn, or any of them, save and except that this defendant, together with the said Ben Marcuse, Lew H. Morris and Joseph M. Finn, did, on or about the 2nd day of April, 1917, enter into certain articles of agreement of limited co-partnership, in and by which this defendant and the said other parties to the said contract agreed to form a limited partnership under and by virtue of the terms of which there should be contributed to the said co-partnership on behalf of this defendant the sum of ninety-five thousand dollars, (\$95,000.00), and there should be contributed to the said co-partnership on behalf of the said Joseph M. Finn the further sum of ninety-five thousand dollars (\$95,000.00), and it was further agreed, under and by virtue of the said agreement of limited co-partnership, that the said Ben Marcuse and Lew H. Morris should be general partners in said limited co-partnership, and that the said Joseph M. Finn and this defendant should be special or limited partners and should not be in any way liable to the creditors of said co-partnership, or in any way liable to contribute anything in any way to said co-partnership beyond the said amount of ninety-five thousand dollars (\$95,000.00) each.

And this defendant says that the said co-partnership so agreed to be entered into constituted a limited co-partnership under the laws of the State of Illinois in force at the time of the execution of said contract, and that under the terms of said contract this defendant did not, nor did the said Joseph M. Finn, assume any liability beyond the amount so contributed on behalf of each of them to the said limited and special co-partnership.

And this defendant further says that on the 30th day of June, 1917, this defendant and the said Ben Marcuse, Lew H. Morris and Joseph M. Finn executed a certificate to be filed in the office of the County Clerk of Cook County, Illinois, setting forth such agreements in regard to the special or limited co-partnership as were required to be set forth by the laws of the State of Illinois then in force, and this defendant says that this defendant was informed and believed that the said certificate was forthwith filed in the Office of the said County Clerk, and that publication was made starting forthwith, all as required by the laws of the State of Illinois.

This defendant, further answering, says that he is now informed and believes, and therefore alleges the fact to be, that the said certificate was recorded in the office of the County Clerk of Cook County, Illinois, on or about the 2nd day of July, 1917, and that immediately thereafter publication of notice of the formation of said limited or special copartnership was made as required by the Statutes of the State of Illinois in force at the time of the execution of the said limited partnership agreement on the 2nd day of April, 1917.

And this defendant says that on the 30th day of June, 1917, the said one hundred and ninety thousand dollars, (\$190,000.00), constituting the contribution to the capital of the said limited or special partnership made on behalf of this defendant and the said Joseph M. Finn was fully paid in, and that this defendant was not advised, until after the filing of the original petition herein, that the said certificate of limited or special partnership had not been filed
139 in the office of the County Clerk of Cook County, Illinois, until after the said 30th day of June, 1917.

This defendant, further answering, says that the capital so contributed by this defendant and by the said Joseph M. Finn to the said co-partnership was furnished in large part by certain contributors thereto who received certain trust certificates or certificates of interest issued under and in accordance with the terms of a certain trust agreement, the original of which is deposited with the Chicago Title & Trust Company, of Chicago, Illinois, a corporation organized under the laws of Illinois, under and by virtue of the terms of which trust agreement the holders of certain certificates therein described were entitled to participate in any income or profits arising from the investment of the said sum of \$190,000.00 in the said limited partnership, and so far as the same may be material this defendant prays leave to refer to the said original trust agreement and trust certificates therein described with like effect as if this defendant had set forth the same in full in this answer.

This defendant further answering says that he entered into the said contract on or about the said 2nd day of April, 1917, well believing that the said contract constituted a valid agreement of limited partnership under the laws of Illinois, and well believing that the rights and obligations of this defendant would be the rights and obligations of a limited partner only, and not believing that any other obligations would under the terms of said contract of partnership or otherwise be incurred by this defendant, and not in any way intending to become a general partner in said partnership, or to assume any other liabilities in connection therewith, than such as were set forth in the said contract of limited partnership, and this defendant further answering says that at all times thereafter until the claim was made in these proceedings that this defendant was a general partner, this defendant had no knowledge of the existence of any possible question as to the liability of this defendant being other than limited to his contribution made, as aforesaid, to the capital of said limited partnership, and this defendant respectfully shows and claims that he is a limited partner in said co-partnership, and is not a general partner and is not liable beyond the amount of the capital so contributed by him, as aforesaid, for any of the debts or obligations of the said co-partnership.

This defendant says that at the time of the filing of the original petition in bankruptcy this defendant was absent from
140 & 141 the city of Chicago on account of sickness and did not return to Chicago until the night of the 16th of March and did not learn of any particulars of the said bankruptcy petition or of any claims that this defendant was in any way liable except as

a special or limited partner, until the 17th day of March, 1920, and that immediately thereafter this defendant, promptly upon learning of the existence of said claim, while still believing and now alleging that the proceedings had in accordance with the said contract of April 2, 1917, constituted this defendant only a limited partner, and not a general partner, but desiring to avoid any question in connection therewith, and as soon as this defendant learned of the said claims and of the alleged facts upon which said claims were based, communicated with the said Joseph M. Finn the desire of this defendant to renounce all interest in the profits of the said business or other compensation by way of income therefrom, and thereupon this defendant and the said Joseph M. Finn promptly tendered in cash to Central Trust Company of Illinois, as receiver appointed by this Honorable Court of the said partnership known as Marcuse & Company, the sum of \$46,000., which was an amount larger than all the profits or other compensation paid to this defendant and the said Joseph M. Finn, and to all persons receiving any share in said income or profits under or on account of the ownership of the said trust certificates, with interest thereon added from the date of such respective payments, and at the same time delivered to the said Central Trust Company of Illinois, as such Receiver, a written instrument of tender and renunciation which was substantially in words and figures as follows:

[Omitted; printed p. 87.]

142 This defendant says that at no time since the execution of the said agreement dated April 2, 1917 has this defendant participated in the management or control of the operation or conduct of the business or transacted any part of the business of said co-partnership or taken any action whatsoever in excess of the action rightfully permitted to be taken by a limited partner in a limited partnership under any laws at any time in force on or after the 2nd day of April, 1917, which would in any way create any legal liability on the part of this defendant as a general partner; and this defendant further says that on all letter heads and on all stationery or advertisements of said Marcuse & Company which have come to his notice or attention where the names of the partners in said partnership are given the name of this defendant has always been followed by the words "special partner," and this defendant is informed and believes, and therefore alleges the fact to be, that in all cases where the name of this defendant appeared as interestd in the said partnership of Marcuse & Company the said interest of this defendant was always described as being the interest of a special partner.

This defendant, further answering, says that since the filing of certain petitions herein, he has learned that it was claimed in said petitions and that it is now claimed by sundry creditors of the said co-partnership, that this defendant is a general partner in said firm, and that so far as this defendant is informed, the only basis for said contention is the claim that the said proceedings which had been taken in connection with the said limited or special partnership did

not comply with the terms of an Act alleged to have been adopted by the Legislature of the State of Illinois and to have become effective on the first day of July, 1917, known as the Uniform Limited Partnership Act.

And this defendant says that while he is advised by counsel, and therefore alleges the fact to be, that the passage of the said Uniform Limited Partnership Act did not, as a matter of law, affect the validity of and binding effect of the said contract of limited or special partnership entered into by this defendant, as hereinbefore set forth, and that therefore the said contract, and the actions taken in pursuance thereof, limit this defendant's liability to the amount of his contribution to the said special or limited partnership, yet this defendant says that it is provided by the terms of the Act known as the Uniform Limited Partnership Act of the State of Illinois, in

substance, that a person who has contributed to the capital of
143 a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership, provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income, and that in said Act it is further provided that such Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect nor to affect any action or proceedings begun or right accrued before such Act takes effect, and this defendant avers that his attempt to enter into a contract which would limit his liability to the liability of a special or limited partner so that his obligation would not be in excess of the amount of capital contributed by him was an attempt made in good faith to comply with the provisions of the statutes of the State of Illinois, and that as soon as this defendant became conscious that any mistake affecting the limitation of his liability was claimed to exist he offered to repay to the Central Trust Company, believed by him to represent the said limited partnership, the full amount of all profits, interest and income which had been paid out by the said limited partnership as a return upon the said capital contributed by or in the name of this defendant; and this defendant says that while the said Central Trust Company, as receiver, as aforesaid, declined at the time to accept the said sum of money, this defendant notified the said Central Trust Company that the said money was subject to its order and direction, and thereafter, by order of this court, entered as of the 19th day of March, A. D. 1920, this defendant and the said Joseph M. Finn paid the said money to the Clerk of this Court, to be held under the terms of said order, to which order this defendant craves leave to refer with like effect as if he had set forth the said order in full herein, and this defendant says that the said sum of money is now held by the Clerk of the Court pursuant to said order, and this defendant says that he is advised and believes, and therefore alleges the fact to be, that even if some technical mistake occurred in connection with the attempt to form the said

limited partnership, nevertheless, under the laws of the State of Illinois applicable thereto, this defendant, in view of the circumstances hereinbefore set forth is not liable as a general partner, 144 nor is this defendant in any way liable personally upon any of the indebtedness of the said co-partnership.

Further answering, this defendant says that he did not control the business of said limited or special co-partnership carried on under the name of Marcuse & Company and did not exercise any control thereof, and that he was not familiar with the books of said co-partnership, and has no knowledge of the allegations in said intervening petition contained as to the claims of the respective petitioners, and has no information sufficient to create a belief in the mind of this defendant as to the allegations of the said petition as to the alleged indebtedness of the said co-partnership to the respective petitioners, wherefore this defendant is unable to either admit or deny the allegations of said petition in regard to such matters, and leaves the petitioners to make such proof as may be necessary or material in connection therewith.

Further answering, this defendant says that he has no personal knowledge of any act of bankruptcy committed or alleged to have been committed by the said limited or special partnership, or as to the proceedings taken in connection with the petition for bankruptcy except through hearsay, and through such of the files and records in this proceeding as have been brought to the knowledge of this defendant.

Further answering, this defendant says that he is possessed of a large amount of personal and real property located in the Northern District of Illinois, and this defendant says that he is informed and believes, and therefore alleges the fact to be, that the said defendant Joseph M. Finn is also possessed of a large amount of real and personal property located in the Northern District of Illinois, and this defendant says that this defendant is entirely solvent and that the value of his property and assets is very largely in excess of the amount of any personal indebtedness on his part, and he is informed and believes, and therefore alleges the fact to be, that the said Joseph M. Finn is also a person of very large means, and that the said Joseph M. Finn is not insolvent and that the value of his assets and property is very largely in excess of the amount of his personal indebtedness, and this defendant says that while this defendant denies that either he, this defendant, or the said Joseph M. Finn is a general partner in the said firm of Marcuse & Company, yet this defendant says that if this defendant and the said Joseph M. Finn, are or shall be held by law to be general partners and liable for the indebtedness of said co-partnership of

145 Marcuse & Company, then said co-partnership is not insolvent and this defendant says that the property and assets of this defendant, and of the said Joseph M. Finn over and above the amount of any indebtedness of this defendant, or the said Joseph M. Finn, are largely in excess of any amount which, added to the value of the assets of the said special partnership, would be required to pay all the indebtedness of the said co-partnership in full.

This defendant further says that he is advised by counsel, and therefore alleges the fact to be, that the said petition in this cause purports to be a petition against this defendant and the other parties named therein, under the description of "co-partners doing business under the trade name of Marcuse & Company," and that the said petition does not purport to allege that this defendant or the said Joseph M. Finn are individually insolvent, and that this defendant files this, his answer, to said petition, for the purpose of fully advising and informing this Honorable Court of the facts set forth in this answer; and this defendant is advised by counsel that under the petition and pleadings in this cause, and under the laws of the United States of America applicable thereto, this Honorable Court is without jurisdiction in this proceeding to adjudge this defendant a bankrupt or to determine the solvency of this defendant, or to determine the issue in this proceeding of whether this defendant is a general partner in said co-partnership of Marcuse & Company, or has any other or different obligation in connection with the said co-partnership, or to the creditors thereof, than his obligations as a special partner therein, as set forth in the said contract of April 2, 1917, and in the said certificate executed July 2, 1917, to the original of which contract and to the original of which certificate and to the recording thereof, as endorsed upon the original of said certificate, this defendant craves leave to refer with like effect as if this defendant had set forth the same at length in this his answer, and this defendant further craves leave to refer to and to make a part of this, his answer, certain proceedings heretofore had in this cause, to-wit: a certain petition filed on behalf of one Harold Lachman, and the answer to the said petition of Harold Lachman heretofore filed by this defendant, with like effect as if the said petition and answer had been set forth in full herein.

And this defendant, for the purpose of respectfully questioning the jurisdiction of this court in this proceeding, specifically denies that this defendant is a bankrupt, or that this defendant is insolvent, or that this defendant is a general partner in the firm of Marcuse & Company, or is a general partner with either Ben Marcuse, Lew H. Morris or Joseph M. Finn, and this defendant alleges that the said intervening petition in bankruptcy filed by the said Fred Meyer, E. H. Allen and Nathan Jacobs, and any and all amendments made thereto, and the original petition filed herein by G. B. Giles, et al., and any and all intervening petitions and amendments thereto heretofore permitted, allowed or made are not, nor is any of them, sufficient to confer jurisdiction upon this Court to adjudge this defendant to be a bankrupt, or to determine the solvency of this defendant, or to determine the issue of liability of this defendant as a general partner in the said firm of Marcuse & Company in this proceeding;

Wherefore, this defendant prays that this Honorable Court shall order that this defendant be not required to further answer the said intervening petition, and that the said petition be dismissed as to this defendant, for the reasons hereinbefore set forth. Frank A. Hecht. Mayer, Meyer, Austrian & Platt, Counsel.

Order of March 25, 1920.

STATE OF ILLINOIS,
County of Cook, ss:

Frank A. Hecht, being duly sworn, on oath deposes and says that he is the defendant named in the foregoing answer subscribed by him, and that he has read said answer and knows the contents thereof, and that the statements in said answer contained are true, except as to those statements therein alleged to be made upon information and belief, and as to such statements this affiant believes them to be true. Frank A. Hecht.

Subscribed and sworn to before me, a Notary Public in and for said County, this 23rd day of March, A. D. 1920. Otto C. Bruhlman. (Seal.)

[File endorsement omitted.]

147 And afterwards, on to-wit, the 25th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of Mar. 25, 1920.

On motion, and upon good cause to the Court shown, it is ordered by the Court that Ben Marcuse have until March 31, 1920, within which to answer the amended and supplemental intervening petition herein.

And afterwards, to wit, on the 12th day of March, A. D. 1920, there was issued out of and under the seal of said Court, in the above entitled cause, a Subpœna; said Subpœna, together with the return and endorsement of Marshal thereon, is in words and figures as follows, to wit:

Form No. 5.

Subpœna to Alleged Bankrupt.

[Filed Mar. 26, 1920.]

NORTHERN DISTRICT OF ILLINOIS,
United States of America:

To Ben Marcuse, Len H. Morris, Joseph M. Finn, and Frank Hecht, copartners, doing business as Marcuse & Company, in said District, Greeting:

For Certain Causes offered before the District Court of the United States of America within and for the Northern District of Illinois, as a Court of Bankruptcy, we command and strictly enjoin you, lay-

ing all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at the City of Chicago, in said District, on the 18th day of March A. D. 1920, at 10 o'clock in the forenoon, to answer to a petition filed by C. B. Giles, et al. in our said Court, praying that you may be adjudged a bankrupt; and to do further and receive that which
 148 our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable Kenesaw M. Landis Judge of said Court, and the seal thereof at Chicago, this 12th day of March A. D. 1920.
 John H. R. Jamar, Clerk. (Seal of the Court.)

I have executed this writ within my District in the following manner, to-wit:

Upon Len Morris named in writ Len H. Morris and Joseph M. Finn by reading the same to and within the presence and hearing of each of them and at the same time delivering to them a true copy hereof together with a copy of the creditors' petition heretofore filed in this matter at Chicago, Illinois on the 13th day of March, A. D. 1920: Upon Frank Hecht by reading the same to and within the presence and hearing of and delivering a true copy hereof to Miss Olga Merisaari, housemaid, she being an adult member of his household and residing at his usual place of abode and at the same time advising her as to the contents hereof and delivering to her a copy of the creditors' petition heretofore filed in this matter at Chicago, Illinois this 17th day of March, A. D. 1920; Upon Ben Marceuse by reading the same to and within his presence and hearing and at the same time delivering to him a true copy hereof together with a copy of the creditors' petition heretofore filed in this matter at Chicago, Illinois this 17th day of March, A. D. 1920. John J. Bradley, United States Marshal, by P. J. Galligan, Deputy.

Marshal's Fees:

4 services.....	8.00
7 miles.....	.42
	<hr/>
	8.42

[File endorsement omitted.]

149 And afterwards, to wit, on the 16th day of March, A. D. 1920, there was issued out of and under the seal of said Court, in the above entitled cause, a subpœna; said subpœna, together with the return and endorsement of marshal thereon, is in words and figures as follows, to wit:

Form No. 5.

Subpœna to Alleged Bankrupt.

[Filed Mar. 26, 1920.]

UNITED STATES OF AMERICA,
Northern District of Illinois:

To Ben Marcuse, Lew H. Morris, Frank Hecht, and Joseph Finn,
individually and as copartners, trading as Marcuse & Company, in
said District, Greeting:

For certain causes offered before the District Court of the United States of America within and for the Northern District of Illinois, as a Court of Bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at the City of Chicago, in said District, on the 20th day of March A. D. 1920, at 10 o'clock in the forenoon, to answer to the intervening and supplementary amended intervening petitions filed by Fred Meyer et al. in our said Court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable Kenesaw M. Landis, Judge of said Court, and the seal thereof at Chicago, this 16th day of March A. D. 1920. John H. R. Jamar, Clerk. (Seal of the Court.)

I have executed this writ within my District in the following manner, to-wit:

Upon the within named Ben Marceuse and Lew Morris by reading the same to and within the presence and hearing of each of them and at the same time delivering to each of them a copy of the
150 creditors' petition heretofore filed in this matter.

Upon Joseph Finn by reading the same to and within the presence and hearing and delivering a true copy hereof to Mrs. Mattie R. Finn, his wife, she being an adult member of his household and residing at his usual place of abode and at the same time informing her of the contents hereof and also delivering to her a copy of the creditors' petition heretofore filed in this matter; upon Frank Hecht by reading the same to and within the presence and hearing of and delivering a true copy hereof to Miss Olga Merisaari, housemaid, she being an adult member of his family and residing at his usual place of abode and at the same time advising her as to the contents hereof and delivering to her a copy of the creditors' petition heretofore filed in this matter. All done at Chicago this 17th day of March, A. D. 1920. John J. Bradley, United States Marshal, by P. J. Galligan, Deputy.

Marshal's Fees:

4 services.....	8.00
6 miles.....	36
	<hr/>
	8.36

Gesas, Epstein & Leonard. Paid \$8.24. C. H. G.

(Endorsed:) Filed Mar. 26, 1920 at — o'clock — M. John H. R. Jamar, Clerk. M. Gesas, Attorney.

[File endorsement omitted.]

And afterwards, on to wit, the 29th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

151 [Title omitted.]

Orders of Mar. 29, 1920.

This cause coming on to be heard upon the examination of witnesses for the discovery of assets, after hearing the evidence by the parties adduced, it is ordered by the Court that the further examination of witnesses be, and hereby is, continued until April 1, 1920, at 10.30 o'clock A. M.

And afterwards, on the same day to wit, on the 29th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

This cause coming on to be heard upon the petition for adjudication herein, the petition of Harold Lachman, the intervening petition and supplemental and intervening petition of Fred Meyer and others, and the answers thereto, come the parties, by their solicitors, and after hearing the evidence by the parties adduced, statements and arguments of counsel, the Court being insufficiently advised in the premises takes time to consider.

And afterwards, on the same day to wit, on the 29th day of March, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

On motion, and for good cause to the Court shown, it is ordered by the Court that Ben Marcuse and Lew H. Morris have until April 2, 1920, within which to answer the petition for adjudication herein.

Orders of Apr. 1, 1920.

And afterwards, on to wit, the 1st day of April, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

On motion it is ordered by the Court that this cause be set down for the examination of witnesses for the discovery of assets on April 3, 1920, at 9 o'clock A. M.

And afterwards, on the same day to wit, on the 1st day of April, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

On motion, the Court being fully advised in the premises, it is ordered that leave be, and hereby is, given Joseph M. Finn to file herein an amended answer, in the nature of a cross-petition, to the intervening petition of C. B. Giles and others. It is further ordered by the Court that a rule to show cause be, and hereby is, entered upon parties respondent to said amended answer, in the nature of a cross-petition, and that subpoenas issue to said respondents.

That afterwards, on the same day to wit, the 1st day of April, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, an amendment to the answer of Joseph M. Finn to the petition of Fred Meyer et al. same being in words and figures as follows, to wit:

153 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Amendment to the Separate Answer of Joseph M. Finn, One of the Defendants to the Petition of Fred Meyer et al., Heretofore Filed Herein by Leave of Court First Had and Obtained.

[Filed Apr. 1, 1920.]

Now comes the said Joseph M. Finn, as defendant, and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein as in the answer to said petition heretofore filed herein on the 18th day of March, 1920, set forth, and respectfully questioning the jurisdiction of this court in this proceeding, as set forth in said answer, this defendant amends said answer

by inserting at the end of the first paragraph on page 13 of said answer, the following:

This defendant further answering says that this defendant and the said Frank A. Hecht, in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of the persons hereinafter named who contributed the moneys which went to make up the sum of One Hundred Ninety Thousand Dollars so contributed in the name of this defendant and the said Frank A. Hecht. And this defendant says that in fact the relationship of this defendant and the said Frank A. Hecht to the said firm of Marcuse & Company was not in any essential respect different from the relation to said firm of the other contributors to the said funds contributed to the capital stock of said special partnership.

This defendant further answering says that the said sum
154 of One Hundred and Ninety Thousand Dollars was contributed as follows:

Twenty-five Thousand Dollars by said Frank A. Hecht,
Thirty-one Thousand Five Hundred Dollars by this defendant,
Fifty Thousand Dollars by Richard Yates Hoffman, acting for and
on behalf of Clement Studebaker and George M. Studebaker,
Twenty-eight Thousand Five Hundred Dollars by Theodore Regenstein,

Thirty Thousand Dollars by Henry Vette and
Twenty-five Thousand Dollars by Peter M. Zunker;

that all of said parties executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris, as general partners, and wherein and whereby all of said parties agreed to and did assume the same responsibility and the same liability as did this defendant and said Frank A. Hecht; that thereafter it was ascertained that certain rules and regulations of the New York Stock Exchange prohibited any partnership dealing on the New York Stock Exchange from having more than two persons designated as special partners, and it was thereupon agreed between all of said parties that said Frank A. Hecht and this defendant should become nominally the special or limited partners in said partnership, but that said interest should be held for the benefit of all of said last named persons in the proportions in which they had contributed said sums of money, and that for the purpose of carrying into effect said understanding said Frank A. Hecht and this defendant executed a certain trust agreement under date of June 30, 1917, wherein and whereby the Chicago Title & Trust Company was constituted the trustee for all of said parties, including said Frank A. Hecht and this defendant, in the collection and distribution of the income payable or distributable under the terms of the special or limited partnership agreement to the special partners therein named, and this defendant prays leave to refer to said original trust agreement and the certificates issued by the Chicago Title and Trust Company

to said various persons above named in connection therewith with like effect as if this defendant had set forth the same in full herein.

This defendant further says that the said trust agreement
155 was prepared by various attorneys representing the different persons who had theretofore agreed to become special partners in said firm of Marcuse & Company, and that this defendant signed the said trust agreement upon the understanding that the phrases and terms therein used were such as were technically required to put into form the prior understanding that all the parties to said prior instrument should retain their prior relationship to the said proposed enterprise but that the names of this defendant and the said Hecht should be used in the said new agreement of partnership for the sole purpose of complying with the rules and regulations of the New York Stock Exchange; and this defendant says that his attention was not called at the time of the execution of said trust agreement or at any time prior thereto to any words or phrases in said instrument which would in any way seem to impose any other or greater responsibility or liability upon this defendant or the said Hecht in connection with the said special partnership than was imposed upon the other persons making like contributions to the said capital stock of the said limited partnership. And this defendant says that until after the filing of the petition in bankruptcy in the above entitled cause this defendant never heard of or knew of any claim that the relationship of this defendant and the said Hecht to the said special partnership was in any way different so far as any question of liability was concerned from that of the other contributors to said fund, and this defendant says that if any words or phrases in said trust agreement appear to impose any other or different liability upon this defendant and the said Hecht from that of the other contributors to said fund, such words and phrases were inadvertently written in the said instrument when said instrument or some part thereof was copied from some form of trust agreement supposed to be applicable to the then situation and should be to the extent necessary therefor reformed in order to express the true meaning and intent of the parties thereto, but this defendant says that in fact it was fully understood and agreed that this defendant and the said Frank A. Hecht in exercising any powers connected with the said trust should be in all respects subject to the direction of the certificate-holders therein described, and that the rights and obligations of each of the holders of said certificates should be identical with the rights and obligations of each of the holders of said certificates should
156 be identical with the rights and obligations of each of the other holders of said certificates including this defendant and the said Frank A. Hecht.

And this defendant says that he is informed and believes and therefore alleges the fact to be that each of the said above named Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker is a person of large means and is amply solvent, and that if the said contributors to said fund above named are or if any of them is liable as a general partner in the firm

of said Marcuse Company then the said firm of Marcuse & Company is not insolvent.

And this defendant further answering says that the said sum of Forty-six Thousand Dollars (\$46,000) in the answer heretofore filed herein referred to as having been tendered by this defendant and Frank A. Hecht to the receiver appointed in the above entitled cause, while it was intended to cover all payments made to or through any person, firm or corporation on account of any supposed profits, interests or dividends paid upon account of the capital stock contributed to said special partnership by the special partners therein, was contributed solely by this defendant and the said Frank A. Hecht who each contributed one-half ($\frac{1}{2}$) thereof and that no part thereof was contributed by any of the other persons who had received the same by virtue of their interest in the said trust certificate.

This defendant further answering says, although specifically denying that either this defendant, or any of said other named parties are in any way general partners of said partnership of Marcuse & Company, or liable for any indebtedness of said partnership excepting to the extent of the contribution made, as aforesaid, yet if this defendant and said Hecht are or shall be held in law to be general partners and liable in any way for any of the debts or liabilities of said partnership then said Richard Yates Hoffman, Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker likewise are and should be held to be general partners and liable for the liabilities of said partnership, and this defendant therefore asks that all of said last named defendants be made parties to these proceedings to the same extent and with the same effect as if they had been named in the original petition filed herein; and that a subpoena issue in accordance with the Acts of Congress in relation

157 to bankruptcy directed to said Richard Yates Hoffman, Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, to show cause, if any, why they should not be joined as defendants to the original petition in bankruptcy herein, as amended, and to each of the various intervening petitions filed herein to which this defendant has been made a party, and that a rule be entered on them and each of them to show cause by a short day to be fixed by this court why they should not be made parties to all orders heretofore entered or hereafter to be entered in this cause against this defendant. Joseph M. Finn. Mayer, Meyer, Austrian & Platt, Of Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

Joseph M. Finn, being first duly sworn on oath deposes and says that he has heard read the foregoing amendment by him subscribed, and knows the contents thereof, and that the statements in said amendment contained are true, except as to those statements therein alleged to be made upon information and belief and as to such statements this affiant believes them to be true. Joseph M. Finn.

Subscribed and sworn to before me, a Notary Public, this 1st day of April, A. D. 1920. Alfred G. Johnson, Notary Public. (Seal.)

[File endorsement omitted.]

That afterwards, on the same day to-wit, the 1st day of April A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, an amendment to the answer of Joseph M. Finn to the petition of C. B. Giles et al. same being in words and figures as follows, to-wit:

158 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Amendment to the Separate Answer of Joseph M. Finn, One of the Defendants to the Petition of C. B. Giles et al., Heretofore Filed Herein by Leave of Court First Had and Obtained.

[Filed Apr. 1, 1920.]

Now comes the said Joseph M. Finn, as defendant, and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein as in the answer to said petition heretofore filed herein on the 19th day of March, 1920, set forth, and respectfully questioning the jurisdiction of this court in this proceeding, as set forth in said answer, this defendant amends said answer by inserting at the end of the first paragraph on page 13 of said answer, the following:

This defendant further answering says that this defendant and the said Frank A. Hecht, in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of the persons hereinafter named who contributed the moneys which went to make up the sum of One Hundred Ninety Thousand Dollars so contributed in the name of this defendant and the said Frank A. Hecht. And this defendant says that in fact the relationship of this defendant and the said Frank A. Hecht to the said firm of Marcuse & Company was not in any essential respect different from the relation to said firm of the other contributors to the said funds contributed to the capital stock of said special partnership.

This defendant further answering says that the said sum of One Hundred and Ninety Thousand Dollars was contributed as follows:

159 Twenty-five Thousand Dollars by said Frank A. Hecht,
Thirty-One Thousand Five Hundred Dollars by this defendant,

Fifty Thousand Dollars by Richard Yates Hoffman, acting for and on behalf of Clement Studebaker and George M. Studebaker, Twenty-eight Thousand Five Hundred Dollars by Theodore Regensteiner,

Thirty Thousand Dollars by Henry Vette and
Twenty-five Thousand Dollars by Peter M. Zunker;

that all of said parties executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris, as general partners, and wherein and whereby all of said parties agreed to and did assume the same responsibility and the same liability as did this defendant and said Frank A. Hecht; that thereafter it was ascertained that certain rules and regulations of the New York Stock Exchange prohibited any partnership dealing on the New York Stock Exchange from having more than two persons designated as special partners, and it was thereupon agreed between all of said parties that said Frank A. Hecht and this defendant should become nominally the special or limited partners in said partnership, but that said interest should be held for the benefit of all of said last named persons in the proportions in which they had contributed said sums of money, and that for the purpose of carrying into effect said understanding said Frank A. Hecht and this defendant executed a certain trust agreement under date of June 30, 1917, wherein and whereby the Chicago Title & Trust Company was constituted the trustee for all of said parties, including said Frank A. Hecht and this defendant, in the collection and distribution of the income payable or distributable under the terms of the special or limited partnership agreement to the special partners therein named, and this defendant prays leave to refer to said original trust agreement and the certificates issued by the Chicago Title and Trust Company to said various persons above named in connection therewith with like effect as if this defendant had set forth the same in full herein.

This defendant further says that the said trust agreement was prepared by various attorneys representing the different persons who had theretofore agreed to become special partners in said firm of Marcuse & Company, and that this defendant signed the
160 said trust agreement upon the understanding that the phrases and terms therein used were such as were technically required to put into form the prior understanding that all the parties to said prior instrument should retain their prior relationship to the said proposed enterprise but that the names of this defendant and the said Hecht should be used in the said new agreement of partnership for the sole purpose of complying with the rules and regulations of the New York Stock Exchange; and this defendant says that his attention was not called at the time of the execution of said trust agreement or at any time prior there to any words or phrases in said instrument which would in any way seem to impose any other or greater responsibility or liability upon this

defendant or the said Hecht in connection with the said special partnership than was imposed upon the other persons making like contributions to the said capital stock of the said limited partnership. And this defendant says that until after the filing of the petition in bankruptcy in the above entitled cause this defendant never heard of or knew of any claim that the relationship of this defendant and the said Hecht to the said special partnership was in any way different so far as any question of liability was concerned from that of the other contributors to said fund, and this defendant says that if any words or phrases in said trust agreement appear to impose any other or different liability upon this defendant and the said Hecht from that of the other contributors to said fund, such words and phrases were inadvertently written in the said instrument when said instrument or some part thereof was copied from some form of trust agreement supposed to be applicable to the then situation and should be to the extent necessary therefor reformed in order to express the true meaning and intent of the parties thereto, but this defendant says that in fact it was fully understood and agreed that this defendant and the said Frank A. Hecht in exercising any powers connected with the said trust should be in all respects subject to the direction of the certificate-holders therein described, and that the rights and obligations of each of the holders of said certificates should be identical with the rights and obligations of each of the other holders of said certificates including this defendant and the said Frank A. Hecht.

And this defendant says that he is informed and believes and therefore alleges the fact to be that each of the said above named
161 Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker is a person of large means and is amply solvent, and that if the said contributors to said fund above named are or if any of them is liable as a general partner in the firm of said Marcuse & Company then the said firm of Marcuse & Company is not solvent.

And this defendant further answering says that the said sum of Forty-six Thousand Dollars (\$46,000) in the answer heretofore filed herein referred to as having been tendered by this defendant and Frank A. Hecht to the receiver appointed in the above entitled cause, while it was intended to cover all payments made to or through any person, firm or corporation on account of any supposed profits, interests or dividends paid upon account of the capital stock contributed to said special partnership by the special partners therein, was contributed solely by this defendant and the said Frank A. Hecht who each contributed one-half ($\frac{1}{2}$) thereof and that no part thereof was contributed by any of the other persons who had received the same by virtue of their interest in the said trust certificate.

This defendant further answering says, although specifically denying that either this defendant, or any of said other named parties are in any way general partners of said partnership of Marcuse & Company, or liable for any indebtedness of said partnership excepting to the extent of the contribution made, as aforesaid, yet if this defendant and said Hecht are or shall be held in law to be gen-

eral partners and liable in any way for any of the debts or liabilities of said partnership then said Richard Yates Hoffman, Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker likewise are and should be held to be general partners and liable for the liabilities of said partnership, and this defendant therefore asks that all of said last named defendants be made parties to these proceedings to the same extent and with the said effect as if they had been named in the original petition filed herein; and that a subpoena issue in accordance with the Acts of Congress in relation to bankruptcy directed to said Richard Yates Hoffman, Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, to show cause, if any, why they should not be joined as defendants to the original petition in bankruptcy herein, as amended, and to each of the various intervening petitions filed herein to which this defendant has
162 been made a party, and that a rule be entered on them and each of them to show cause by a short day to be fixed by this court why they should not be made parties to all orders heretofore entered or hereafter to be entered in this cause against this defendant. Joseph M. Finn. Mayer, Meyer, Austrian & Platt, of Counsel.

STATE OF ILLINOIS,

County of Cook, ss:

Joseph M. Finn, being first duly sworn, on oath deposes and says that he has heard read the foregoing amendment by him subscribed, and knows the contents thereof, and that the statements in said amendment contained are true, except as to those statements therein alleged to be made upon information and belief and as to such statements this affiant believes them to be true. Joseph M. Finn.

Subscribed and sworn to before me, a Notary Public, this 1st day of April, A. D. 1920. Alfred G. Johnson, Notary Public.

[File endorsement omitted.]

That afterwards, on the same day, to wit, the 1st day of April, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, an amendment to the answer of Joseph M. Finn to the petition of Harold Lachman, same being in words and figures as follows, to-wit:

163 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Amendment to the Separate Answer of Joseph M. Finn, One of the Defendants to the Petition of Harold Lachman, Heretofore Filed Herein by Leave of Court First Had and Obtained.

(Filed Apr. 1, 1920.)

Now comes the said Joseph M. Finn, as defendant, and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein as in the answer to said petition heretofore filed herein on the 19th day of March, 1920, set forth, and respectfully questioning the jurisdiction of this court in this proceeding, as set forth in said answer, this defendant amends said answer by inserting after paragraph 12 and before paragraph 13, on the tenth page of said answer, the following:—

This defendant further answering says that this defendant and the said Frank A. Hecht, in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of the persons hereinafter named who contributed the moneys which went to make up the sum of One Hundred Ninety Thousand Dollars so contributed in the name of this defendant and the said Frank A. Hecht. And this defendant says that in fact the relationship of this defendant and the said Frank A. Hecht to the said firm of Marcuse & Company was not in any essential respect different from the relation to said firm of the other contributors to the said funds contributed to the capital stock of said special partnership.

This defendant further answering says that the said sum
164 of One Hundred and Ninety Thousand Dollars was contributed as follows:—

Twenty-five Thousand Dollars by said Frank A. Hecht,
Thirty-one Thousand Five Hundred Dollars by this defendant,
Fifty Thousand Dollars by Richard Yates Hoffman, acting for and on behalf of Clement Studebaker and George M. Studebaker,
Twenty-eight Thousand Five Hundred Dollars by Theodore Regensteiner.

Thirty Thousand Dollars by Henry Vette and
Twenty-five Thousand Dollars by Peter M. Zunker;

that all of said parties executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris, as general partners, and wherein and whereby all of said parties agreed to and did assume the same responsibility and the same liability as did this defendant and said Frank A. Hecht; that thereafter it was ascertained that certain rules and

regulations of the New York Stock Exchange prohibited any partnership dealing on the New York Stock Exchange from having more than two persons designated as special partners, and it was thereupon agreed between all of said parties that said Frank A. Hecht and this defendant should become nominally the special or limited partners in said partnership, but that said interest should be held for the benefit of all of said named persons in the proportions in which they had contributed said sums of money, and that for the purpose of carrying into effect said understanding said Frank A. Hecht and this defendant executed a certain trust agreement under date of June 30, 1917, wherein and whereby the Chicago Title & Trust Company was constituted the trustee for all of said parties, including said Frank A. Hecht and this defendant, in the collection and distribution of the income payable or distributable under the terms of the special or limited partnership agreement to the special partners therein named, and this defendant prays leave to refer to said original trust agreement and the certificates issued by the Chicago Title and Trust Company to said various persons above named in connection therewith with like effect as if this defendant had set forth the same in full herein.

This defendant further says that the said trust agreement was prepared by various attorneys representing the different persons who had theretofore agreed to become special partners in said firm of Marcuse & Company, and that this defendant signed the said trust agreement upon the understanding that the phrases and terms therein used were such as were technically required to put into form the prior understanding that all the parties to said prior instrument should retain their prior relationship to the said proposed enterprise but that the names of this defendant and the said Hecht should be used in the said new agreement of partnership for the sole purpose of complying with the rules and regulations of the New York Stock Exchange; and this defendant says that his attention was not called at the time of the execution of said trust agreement or at any time prior thereto to any words or phrases in said instrument which would in any way seem to impose any other or greater responsibility or liability upon this defendant or the said Hecht in connection with the said special partnership than was imposed upon the other persons making like contributions to the said capital stock of the said limited partnership. And this defendant says that until after the filing of the petition in bankruptcy in the above entitled cause this defendant never heard of or knew of any claim that the relationship of this defendant and the said Hecht to the said special partnership was in any way different so far as any question of liability was concerned from that of the other contributors to said fund, and this defendant says that if any words or phrases in said trust agreement appear to impose any other or different liability upon this defendant and the said Hecht from that of the other contributors to said fund, such words and phrases were inadvertently written in the said instrument when said instrument or some part thereof was copied from some form of trust agreement supposed to be applicable to the then situation and should be to the extent necessary therefor reformed in order to express the true

meaning and intent of the parties thereto, but this defendant says that in fact it was fully understood and agreed that this defendant and the said Frank A. Hecht in exercising any powers connected with the said trust should be in all respects subject to the direction of the certificate-holders therein described, and that the rights and obligations of each of the holders of said certificates should be identical with the rights and obligations of each of the other holders of said certificates including this defendant and the said Frank A. Hecht.

And this defendant says that he is informed and believes
166 and therefore alleges the fact to be that each of the said above named Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vetter and Peter M. Zuncker is a person of large means and is amply solvent, and that if the said contributors to said fund above named are or if any of them is liable as a general partner in the firm of said Marcuse & Company then the said firm of Marcuse & Company is not insolvent.

And this defendant further answering says that the said sum of Forty-six Thousand Dollars (\$46,000) in the answer heretofore filed herein referred to as having been tendered by this defendant and Frank A. Hecht to the receiver appointed in the above entitled cause, while it was intended to cover all payments made to or through any person, firm or corporation on account of any supposed profits, interests or dividends paid upon account of the capital stock contributed to said special partnership by the special partners therein, was contributed solely by this defendant and the said Frank A. Hecht who each contributed one-half ($\frac{1}{2}$) thereof and that no part thereof was contributed by any of the other persons who had received the same by virtue of their interest in the said trust certificate.

This defendant further answering says, although specifically denying that either this defendant, or any of said other named parties are in any way general partners of said partnership of Marcuse & Company, or liable for any indebtedness of said partnership excepting to the extent of the contribution made, as aforesaid, yet if this defendant and said Hecht are or shall be held in law to be general partners and liable in any way for any of the debts or liabilities of said partnership then said Richard Yates Hoffman, Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker likewise are and should be held to be general partners and liable for the liabilities of said partnership, and this defendant therefore asks that all of said last named defendants be made parties to these proceedings to the same extent and with the same effect as if they had been named in the original petition filed herein; and that a subpoena issue in accordance with the Acts of Congress in relation to bankruptcy directed to said Richard Yates Hoffman, Clement Studebaker, George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, to show cause, if any, why they should not be joined as defendants to the original petition in

167 bankruptcy herein, as amended, and to each of the various intervening petitions filed herein to which this defendant has been made a party, and that a rule be entered on them and each of

them to show cause by a short day to be fixed by this court why they should not be made parties to all orders heretofore entered or hereafter to be entered in this cause against this defendant. Joseph M. Finn. Mayer, Meyer, Austrian & Platt, Of Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

Joseph M. Finn, being first duly sworn, on oath deposes and says that he has heard read the foregoing amendment by him subscribed, and knows the contents thereof, and that the statements in said amendment contained are true, except as to those statements therein alleged to be made upon information and belief and as to such statements this affiant believes them to be true. Joseph M. Finn.

Subscribed and sworn to before me, a Notary Public, this 1st day of April, A. D. 1920. Alfred E. Johnson, Notary Public.

[File endorsement omitted.]

And afterwards on to-wit the 8th day of April, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause a withdrawal of appearances, the same being in words and figures as follows, to-wit:

168 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Withdrawal of Appearance.

[Filed Apr. 8, 1920.]

We hereby withdraw our appearance as Attorneys for Central Trust Company of Illinois, Receiver. Foreman & Blumrosen.

Endorsed: No. 28339. District Court of United States, Northern District of Illinois, Eastern Division. In the matter of Ben Marcuse, et al., Bankrupts. Withdrawal of Appearance. Filed Apr. 8, 1920, at — o'clock — M. John H. R. Jamar, Clerk.

That afterwards, on the same day, on to-wit, the 12th day of April, A. D. 1920 there was filed in the office of the Clerk of said Court the response of Clement Studebaker Jr. and George M. Studebaker to the Amendment to the Answer of Joseph M. Finn to the petition of Harold Lachman, same being in words and figures as follows, to-wit:

169 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Response of Clement Studebaker, Jr., and George M. Studebaker, Respondents, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now Come Clement Studebaker, Jr., and George M. Studebaker, respondents named in the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman filed in the above entitled cause (herein called the Amendment), and not submitting themselves to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to these respondents, and as to this subject matter, as more particularly set forth hereinafter, responds to said Amendment, and show cause why no subpoena may properly issue against these respondents, and why these respondents may not properly be joined as defendants to any petition in said cause, and why these respondents may not properly be made parties defendant or otherwise, to any order herein, and say, and each for himself says:

1. That he denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Co. were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment. This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Co. was not essentially different from the
170 relations of said firm with this respondent and the other persons named in said amendment; but avers that said relationship was essentially different. This respondent denies that said sum of One Hundred Ninety Thousand Dollars (\$190,000) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company, special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary this respondent is informed and believes and therefore avers that early in April, 1917, a contemplated contract of limited partnership was drafted, and was signed by divers parties who contemplated contributing thereto divers sums, and who contemplated forming a limited partnership but not including this re-

spondent. This respondent denies, however, on the same information and belief, that said signed draft was ever delivered by or to any of the parties thereto, or ever became effective for any purpose, or that any person ever contributed any sum of money to it.

This respondent is informed and believes and therefore avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective, and that all concerned therein knew and understood that it never became or was effective as a contract partnership.

3. This respondent is informed and believes and therefore avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed, among and between themselves, a contract purporting to create a limited partnership, a copy whereof is hereto attached, marked Exhibit "A," and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent is informed and believes and therefore avers that said Exhibit "A" is a true copy of the only partnership contract, to which said Finn and Hecht were parties, which ever was created or became effective as a contract.

This respondent avers that said Richard Yates Hoffman, George M. Studebaker and Clement Studebaker, Jr. were not, nor was either of them, a party to said (Exhibit "A") partnership contract, and that this respondent never saw said Hecht or said Finn, and never saw said document of which Exhibit "A" is a copy, prior to March, 1290.

4. This respondent denies that it was ever agreed between all of said parties, or by this respondent and any of said parties, that said Hecht and Finn should become, nominally, special or limited partners in said partnership (Exhibit "A"), or that said interest of Hecht and Finn therein should be held for the benefit of all said named persons, or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30, 1917, as alleged in said amendment.

5. On the contrary, this respondent is informed and believes and therefore avers that on and under date of June 30, 1917 said Finn and Hecht made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a true copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached, marked Exhibit "B" and is hereby referred to, and made a part hereof, as fully and to the same effect as if incorporated herein.

This respondent is informed and believes and therefore avers that upon the execution of said trust agreement, Richard Yates Hoffman paid to said Hecht and said Finn, under and by virtue of said trust agreement, and in order to acquire a trust certificate thereunder and not otherwise, the sum of Fifty Thousand Dollars (\$50,000). This respondent avers that Clement Studebaker, Jr. and George M.

Studebaker never at any time contributed or paid any sum of money to said Hecht and Finn, or either of them, or made any agreement of any kind with them or either of them.

6. This respondent is informed and believes and therefore avers that on June 30, 1917, "Studebaker Bros. Trust" made its check for Fifty Thousand Dollars (\$50,000) payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately, and on the same day, endorsed said check and made it thereby payable to the order of said Finn and Hecht, as trustees, and then delivered the same to them, under and by virtue of said trust agreement and not otherwise.

172 This respondent is informed and believes and therefore avers that thereupon said Chicago Title & Trust Company, under and by virtue of said trust agreement, and in consideration of the payment of said Fifty Thousand Dollars (\$50,000) issued its certificate in favor of said Richard Yates Hoffman, bearing date June 30, 1917, for One Hundred (100) shares in the Hecht-Finn Trust, a true copy of which certificate is hereto attached and marked Exhibit "C" and is hereby referred to and made part hereof as fully and to the same effect as if incorporated herein. That said certificate was so delivered to said Richard Yates Hoffman on, to wit: the 2nd day of July, 1917, that he thereupon endorsed the same, and delivered it to Studebaker Bros. Trust, which had at all times been the owner of said certificate, as a part of its assets, and a part of its fund; that except as above stated, said Richard Yates Hoffman had no connection with or relation to said subject matter, and this respondent avers that said "Studebaker Bros. Trust" then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title & Trust Company and which was being administered by it as a fund under a certain trust deed made and executed March 1, 1916, for the benefit of various persons, including, among others, Clement Studebaker, Jr. and George M. Studebaker, and in nowise related to the subject matter of this controversy.

7. This respondent admits on information and belief that said trust agreement was prepared by a number of attorneys representing different persons named in said amendment, and denies on information and belief that Hecht or Finn or any signer thereof, signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms. This respondent on information and belief denies that any of the terms of said trust agreement were inadvertently used, but is informed and believes and therefore avers that before the execution thereof it was prepared, with great care, and with frequent revisions, and that it was made and signed with full knowledge by the signers thereof, of its contents and terms; and that the said certificate issued thereunder as aforesaid, was issued and accepted and paid for as aforesaid, in sole reliance upon the terms of said trust agreement.

This respondent further avers that Clement Studebaker, Jr. and said George M. Studebaker, never at any time saw said Hecht or said Finn, or made or entered into any agreement or contract whatever,

173 with said Hecht and Finn; and that the sole relation of this respondent to the subject matter of said "trust agreement" was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of Fifty Thousand Dollars (\$50,000) with which said certificate was purchased as an investment for and on behalf of said Studebaker Bros. Trust, as a part of its property.

This respondent avers that at the time of the occurrence of the various transactions therein referred to, this respondent had no participation in, and no knowledge or information concerning the same. That he never saw the contract of alleged partnership (Exhibit "A"), or the trust agreement (Exhibit "B") or the trust certificate (Exhibit "C"), or the said check of Studebaker Bros. Trust for Fifty Thousand Dollars (\$50,000), until within a few days before this response was filed. That prior to March 11, 1920, his sole knowledge relating to said transactions was that Studebaker Bros. Trust had purchased an investment, and carried and reported as part of its assets, a "Hecht-Finn Certificate", for Fifty Thousand Dollars (\$50,000).

8. This respondent admits that Clement Studebaker, Jr. and said George M. Studebaker are persons of large means and amply solvent, but says with reference thereto that neither of them is nor ever has been a partner of any kind, of said firm of Marcuse & Company.

9. This respondent admits the allegation of said amendment wherein and whereby said amendment states that said Richard Yates Hoffman, Clement Studebaker, Jr. and George M. Studebaker are not partners in said partnership of Marcuse & Company and are not liable for any indebtedness of the same.

This respondent denies that he now is, or ever has been, a general partner or a special partner of said Marcuse & Company.

10. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency, or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that no person having any legal authority so to do, has made any prayer or petition against this respondent; that said Joseph M.

174 Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued therein against respondent is lawfully issued.

11. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above

named alleged bankrupts or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth this respondent denies that he has committed any act of bankruptcy, or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever and he demands that the same may be inquired of by a jury.

12. Wherefore, and for all the matters herein set forth, this respondent shows that this respondent should not be joined or required to answer as defendant, to any petition, answer, amendment to answer, or intervening petition in said cause, or otherwise; and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause, issued by this honorable court should be discharged, and this respondent hence dismissed. George M. Studebaker. Clement Studebaker, Jr.

STATE OF ILLINOIS,
County of Cook, ss:

George M. Studebaker, first being duly sworn, on oath deposes and says that he is one of the respondents named in the foregoing response subscribed by him and that he makes this affidavit for himself and for Clement Studebaker, Jr. who is one of the defendants named in said foregoing response, and that he has read said response and knows the contents thereof and that the statements in said response contained are true, except as to those statements therein alleged to be made on information and belief and as to such statements this affiant believes them to be true. George M. Studebaker.

Subscribed and sworn to before me, a Notary Public, in and for said County, this 12th day of April, 1920. Hazel McBroom, Notary Public. (Notarial Seal.) My commission expires June 21, 1923. Marquis Eaton, Donald Defrees, Counsel.

Exhibit "A."

[Omitted; printed p. 26.]

183-189

Exhibit "B."

[Omitted; printed p. 33.]

190 STATE OF ILLINOIS,
County of Cook, ss:

I, Henry T. Sanford, a Notary Public in and for the County of Cook and State of Illinois, do hereby certify that Frank A. Hecht and Joseph M. Finn, personally known to me to be the same persons described in and who signed the above instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 30th day of June, A. D. 1917. Henry T. Sanford, Notary Public as Aforesaid.

We, the undersigned, Ben Marcuse and L. H. Morris, general partners, and Frank A. Hecht and Joseph M. Finn, special partners, in the firm of Marcuse & Co., do hereby acknowledge that we have read the foregoing instrument and are familiar with its contents and all of the terms, conditions and provisions thereof and have assented thereto and we, on behalf of said copartnership and as well individually, agree to do or cause to be done any and all acts and things, and to execute or cause to be executed any and all documents, writings and instruments necessary, proper or convenient to be done, caused to be done or executed, in order fully and effectually to carry out the terms and provisions of said instrument.

Witness our hands and seals this 30th day of June, A. D. 1917. Ben Marcuse (Seal), Lew H. Morris (Seal), Frank A. Hecht (Seal), Jos. M. Finn (Seal), Individually and as Copartners under the Firm Name Marcuse & Co.

Chicago, Title and Trust Company, in consideration of its appointment (however, subject to its right to resign and expressly conditioned upon its limited liability as in the above instrument provided), hereby accepts and agrees to undertake and carry out the terms and provisions of the above instrument relating to it as

191 Trust Company and its acceptance shall have all and the same full and effect as if each said terms and provisions were now and herein specifically set forth and agreed to. Chicago Title and Trust Company, by J. A. Richardson, Its Vice-President. (Corporate Seal.) Attest: R. W. Boddinhouse, Its Secretary.

Exhibit "A" to Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to this Answer is a true, full and correct copy.)

Exhibit "C."

Certificate No. 3.

100 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380. Trust Certificate.

This certifies that Rich'd Yates Hoffman is the owner of 100 shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like

manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the books of registry kept by and at the office of the undersigned Trust Company
192 by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 30th day of June, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriot, Its Vice President. (Corporate Seal.) Attest: R. W. Boddinhouse, Its Secretary. H. D. P.

[File endorsement omitted.]

That afterwards, on the same day, on to wit, the 12th day of April, A. D. 1920 there was filed in the office of the Clerk of said Court the response of Clement Studebaker Jr. and George M. Studebaker to the Amendment to the Answer of Joseph M. Finn to the petition of Fred Meyer et al., same being in words and figures as follows: to wit:

193 In the District Court of the United States for the Northern District of Illinois, Eastern District.

[Title omitted.]

The Response of Clement Studebaker, Jr., and George M. Studebaker, Respondents, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Meyer, E. H. Allen, and Nathan Jacobs, as Amended Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now come Clement Studebaker, Jr., and George M. Studebaker, respondents named in the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Meyer, E. H. Allen and Nathan Jacobs, as amended, filed in the above entitled cause (herein called the Amendment), and not submitting themselves to the juris-

diction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to these respondents, and as to this subject matter, as more particularly set forth hereinafter, responds to said Amendment, and show cause why no subpoena may properly issue against these respondents, and why these respondents may not properly be joined as defendants to any petition in said cause, and why these respondents may not properly be made parties defendant or otherwise, to any order herein, and say, and each for himself says:—

1. That he denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment. This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different
194 from the relations of said firm with this respondent and the other persons named in said amendment; but avers that said relationship was essentially different. This respondent denies that said sum of One Hundred Ninety Thousand Dollars (\$190,000) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company, special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with the said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary this respondent is informed and believes and therefore avers that early in April, 1917, a contemplated contract of limited partnership was drafted, and was signed by divers parties who contemplated contributing thereto divers sums, and who contemplated forming a limited partnership but not including this respondent. This respondent denies, however, on the same information and belief, that said signed draft was ever delivered by or to any of the parties thereto, or ever became effective for any purpose, or that any person ever contributed any sum of money to it.

This respondent is informed and believes and therefore avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective, and that all concerned therein knew and understood that it never became or was effective as a contract partnership.

3. This respondent is informed and believes and therefore avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves, a contract purporting to create a limited partnership, a copy whereof is hereto attached, marked Exhibit "A", and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent is informed and believes and therefore avers that said Exhibit "A" is a true copy of the only partnership contract, to which said Finn and Hecht were parties, which ever was created or became effective as a contract.

This respondent avers that said Richard Yates Hoffman, George M. Studebaker and Clement Studebaker, Jr. were not, nor was
195 either of them, a party to said (Exhibit "A") partnership contract, and that this respondent never saw said Hecht or said Finn, and never saw said document of which Exhibit "A" is a copy, prior to March, 1920.

4. This respondent denies that it was ever agreed between all of said parties, or by this respondent and any of said parties, that said Hecht and Finn should become, nominally, special or limited partners in said partnership (Exhibit "A"), or that said interest of Hecht and Finn therein should be held for the benefit of all said named persons, or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30, 1917, as alleged in said amendment.

5. On the contrary, this respondent is informed and believes and therefore avers that on and under date of June 30, 1917 said Finn and Hecht made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a true copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached, marked Exhibit "B" and is hereby referred to, and made a part hereof, as fully and to the same effect as if incorporated herein.

This respondent is informed and believes and therefore avers that upon the execution of said trust agreement, Richard Yates Hoffman paid to said Hecht and said Finn, under and by virtue of said trust agreement, and in order to acquire a trust certificate thereunder and not otherwise, the sum of Fifty Thousand Dollars (\$50,000). This respondent avers that Clement Studebaker, Jr. and George M. Studebaker never at any time contributed or paid any sum of money to said Hecht and Finn, or either of them, or made any agreement of any kind with them or either of them.

6. This respondent is informed and believes and therefore avers that on June 30, 1917, "Studebaker Bros. Trust" made its check for Fifty Thousand Dollars (\$50,000.) payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately, and on the same day, endorsed said check and made it thereby payable to the order of said Finn and Hecht, as trustees, and then delivered the same to them, under and by virtue of said trust agreement and not otherwise.

This respondent is informed and believes and therefore avers that thereupon said Chicago Title & Trust Company, under and
196 by virtue of said trust agreement, and in consideration of the payment of said Fifty Thousand Dollars (\$50,000.) issued its certificate in favor of said Richard Yates Hoffman, bearing date June 30, 1917, for One Hundred (100) shares in the Hecht-Finn Trust, a true copy of which certificate is hereto attached and marked Exhibit "C" and is hereby referred to and made part hereof as fully and to the same effect as if incorporated herein. That said certificate was so delivered to said Richard Yates

Hoffman on, to wit: the 2nd day of July, 1917; that he thereupon endorsed the same, and delivered it to Studebaker Bros. Trust, which had at all times been the owner of said certificate, as a part of its assets, and a part of its fund; that except as above stated, said Richard Yates Hoffman had no connection with or relation to said subject matter; and this respondent avers that said "Studebaker Bros. Trust" then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title & Trust Company and which was being administered by it as a fund under a certain trust deed made and executed March 1, 1916, for the benefit of various persons, including, among others, Clement Studebaker, Jr. and George M. Studebaker, and in nowise related to the subject matter of this controversy.

7. This respondent admits on information and belief that said trust agreement was prepared by a number of attorneys representing different persons named in said amendment, and denies on information and belief that Hecht or Finn or any signer thereof, signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms. This respondent on information and belief denies that any of the terms of said trust agreement were inadvertently used, but is informed and believes and therefore avers that before the execution thereof it was prepared, with great care, and with frequent revisions, and that it was made and signed with full knowledge by the signers thereof, of its contents and terms; and that the said certificate issued thereunder as aforesaid, was issued and accepted and paid for as aforesaid, in sole reliance upon the terms of said trust agreement.

This respondent further avers that Clement Studebaker, Jr. and said George M. Studebaker, never at any time saw said Hecht or said Finn, or made or entered into any agreement or contract whatever, with said Hecht and Finn; and that the sole relation of 197 this respondent to the subject matter of said "trust agreement" was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of Fifty Thousand Dollars (\$50,000.) with which said certificate was purchased as an investment for and on behalf of said Studebaker Bros. Trust, as a part of its property.

This respondent avers that at the time of the occurrence of the various transactions herein referred to, this respondent had no participation in, and no knowledge or information concerning the same. That he never saw the contract or alleged partnership (Exhibit "A"), or the trust agreement (Exhibit "B") or the trust certificate (Exhibit "C"), or the said check of Studebaker Bros. Trust for Fifty Thousand Dollars (\$50,000.), until within a few days before this response was filed. That prior to March 11, 1920, his sole knowledge relating to said transaction was that Studebaker Bros. Trust, had purchased as an investment and carried and reported as part of its assets, a "Hecht-Finn Certificate", for Fifty Thousand Dollars (\$50,000.).

8. This respondent admits that Clement Studebaker, Jr. and said George M. Studebaker are persons of large means and amply solvent,

but says with reference thereto that neither of them is nor ever has been a partner of any kind, of said firm of Marcuse & Company.

9. This respondent admits the allegation of said amendment wherein and whereby said amendment states that said Richard Yates Hoffman, Clement Studebaker, Jr. and George M. Studebaker are not partners in said partnership of Marcuse & Company and are not liable for any indebtedness of the same.

This respondent denies that he now is, or ever has been, a general partner or a special partner of said Marcuse & Company.

10. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency, or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that no person having any legal authority so to do, has made any prayer or petition against this respondent; that said Joseph M. Finn is wholly

without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued therein against respondent is lawfully issued.

11. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever and he demands that the same may be inquired of by a jury.

12. Wherefore, and for all the matters herein set forth, this respondent shows that this respondent should not be joined or required to answer as defendant, to any petition, answer, amendment to answer, or intervening petition in said cause, or otherwise; and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause, issued by this honorable court should be discharged, and this respondent hence dismissed. George M. Studebaker. Clement Studebaker, Jr.

STATE OF ILLINOIS,
County of Cook, ss:

George M. Studebaker, first being duly sworn, on oath deposes and says that he is one of the respondents named in the foregoing response subscribed by him and that he makes this affidavit for himself and

for Clement Studebaker, Jr. who is one of the defendants named in said foregoing response, and that he has read said response and knows the contents thereof and that the statements in said response contained are true, except as to those statements therein alleged
 199 to be made on information and belief and as to such statements this affiant believes them to be true. George M. Studebaker.

Subscribed and sworn to before me, a Notary Public, in and for said County, this 12th day of April, 1920. Hazel McBroom, Notary Public. (Notarial Seal.) My commission expires June 21, 1923. Marquis Eaton, Donald Defrees, Counsel.

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Endorsed: In Bankruptcy. 28339. In the District Court of the United States for the Northern District of Illinois, Eastern Division in the matter of Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, trading as Marcuse & Company, Alleged
 200 Bankrupts. The Response of Clement Studebaker, Jr., and George M. Studebaker, Respondents, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Mayer, E. H. Allen and Nathan Jacobs, As Amended, Heretofore filed in said cause. Filed Apr. 12, 1920 at 4:25 o'clock P. M. John H. R. Jamar, Clerk.

That afterwards, on the same day, on to-wit, the 12th day of April, A. D. 1920, there was filed in the office of the Clerk of said Court the response of Clement Studebaker Jr. and George M. Studebaker to

the Amendment to the Answer of Joseph M. Finn to the petition of C. B. Giles et al., same being in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Response of Clement Studebaker, Jr., and George M. Studebaker, Respondents, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of C. B. Giles, John Janca, and I. Flegel, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now Come Clement Studebaker, Jr., and George M. Studebaker, respondents named in the Amendment to the Separate Answer of Joseph M. Finn to the Petition of C. B. Giles, John Janca and I Flegel filed in the above entitled cause (herein called the Amendment), and not submitting themselves to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to these respondents,

and as to this subject matter, as more particularly set forth
 201 hereinafter, responds to said Amendment, and show cause why no subpoena may properly issue against these respondents, and why these respondents may not properly be joined as defendants to any petition in said cause, and why these respondents may not properly be made parties defendant or otherwise, to any order herein, and say, and each for himself says:

1. That he denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment. This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relations of said firm with this respondent and the other persons named in said amendment; but avers that said relationship was essentially different. This respondent denies that said sum of One Hundred Ninety Thousand Dollars (\$190,000.) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company, special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary this respondent is informed and believes and therefore avers that early in April, 1817, a contemplated contract of limited partnership was drafted, and was signed by divers par-

ties who contemplated contributing thereto divers sums, and who contemplated forming a limited partnership but not including this respondent. This respondent denies, however, on the same information and belief, that said signed draft was ever delivered by or to any of the parties thereto, or ever became effective for any purpose, or that any person ever contributed any sum of money to it.

This respondent is informed and believes and therefore avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective, and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent is informed and believes and therefore avers that subsequently and independent thereof said Marcuse, 202 Morris, Finn and Hecht entered into and executed, among and between themselves, a contract purporting to create a limited partnership, a copy whereof is hereto attached, marked Exhibit "A," and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent is informed and believes and therefore avers that said Exhibit "A" is a true copy of the only partnership contract, to which said Finn and Hecht were parties, which ever was created or became effective as a contract.

This respondent avers that said Richard Yates Hoffman, George M. Studebaker and Clement Studebaker, Jr. were not, nor was either of them, a party to said (Exhibit "A") partnership contract, and that this respondent never saw said Hecht or said Finn, and never saw said document of which Exhibit "A" is a copy, prior to March, 1920.

4. This respondent denies that it was ever agreed between all of said parties, or by this respondent and any of said parties, that said Hecht and Finn should become, nominally, special or limited partners in said partnership (Exhibit "A"), or that said interest of Hecht and Finn therein should be held for the benefit of all said named persons, or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30, 1917, as alleged in said amendment.

5. On the contrary, this respondent is informed and believes and therefore avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain trust agreement to and in favor of Chicago Title & Trust Co., an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Co.

This respondent avers that a true copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached, marked Exhibit "B" and is hereby referred to, and made a part hereof, as fully and to the same effect as if incorporated herein.

This respondent is informed and believes and therefore avers that upon the execution of said trust agreement, Richard Yates Hoffman paid to said Hecht and said Finn, under and by virtue of said trust agreement, and in order to acquire a trust certificate

thereunder and not otherwise, the sum of Fifty Thousand Dollars (\$50,000.); This respondent avers that Clement Studebaker, Jr. and George M. Studebaker never at any time contributed or paid any sum of money to said Hecht and Finn, or either of them, or made any agreement of any kind with them or either of them.

6. This respondent is informed and believes and therefore avers that on June 30, 1917, "Studebaker Bros. Trust" made its check for Fifty Thousand Dollars (\$50,000.) payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately, and on the same day, endorsed said check and made it thereby payable to the order of said Finn and Hecht, as Trustees, and then delivered the same to them, under and by virtue of said trust agreement and not otherwise.

This respondent is informed and believes and therefore avers that thereupon said Chicago Title and Trust Co., under and by virtue of said trust agreement, and in consideration of the payment of said Fifty Thousand Dollars (\$50,000.) issued its certificate in favor of said Richard Yates Hoffman, bearing date June 30, 1917, for One Hundred (100) shares in the Hecht-Finn Trust, a true copy of which certificate is hereto attached and marked Exhibit "C" and is hereby referred to and made part hereof as fully and to the same effect as if incorporated herein. That said certificate was so delivered to said Richard Yates Hoffman on, to wit: the 2nd day of July, 1917; that he thereupon endorsed the same, and delivered it to Studebaker Bros. Trust, which had at all times been the owner of said certificate, as a part of its assets, and a part of its fund; that except as above stated, said Richard Yates Hoffman had no connection with or relation to said subject matter; and this respondent avers that said "Studebaker Bros. Trust" then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title & Trust Company and which was being administered by it as a fund under a certain trust deed made and executed March 1, 1916, for the benefit of various persons, including, among others, Clement Studebaker, Jr. and George M. Studebaker, and in nowise related to the subject matter of this controversy.

7. This respondent admits on information and belief that said trust agreement was prepared by a number of attorneys representing different persons named in said amendment, and denies on information and belief that Hecht or Finn or any signer thereof, signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms. This respondent on information and belief denies that any of the terms of said trust agreement were inadvertently used, but is informed and believes and therefore avers that before the execution thereof it was prepared, with great care, and with frequent revisions, and that it was made and signed with full knowledge by the signers thereof, of its contents and terms; and that the said certificate issued thereunder as aforesaid, was

issued and accepted and paid for as aforesaid, in sole reliance upon the terms of said trust agreement.

This respondent further avers that Clement Studebaker, Jr. and said George M. Studebaker, never at any time saw said Hecht or said Finn, or made or entered into any agreement or contract whatever, with said Hecht and Finn; and that the sole relation of this respondent to the subject matter of said "trust agreement" was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of Fifty Thousand Dollars (\$50,000.) with which said certificate was purchased as an investment for and on behalf of said Studebaker Bros. Trust, as a part of its property.

This respondent avers that at the time of the occurrence of the various transactions herein referred to, this respondent had no participation in, and no knowledge or information concerning the same. That he never saw the contract of alleged partnership (Exhibit "A"), or the trust agreement (Exhibit "B") or the trust certificate (Exhibit "C"), or the said check of Studebaker Bros. Trust for Fifty Thousand Dollars (\$50,000.) until within a few days before this response was filed. That prior to March 11, 1920, his sole knowledge relating to said transactions was that Studebaker Bros. Trust, had purchased as an investment, and carried and reported as part of its assets, a "Hecht-Finn Certificate," for Fifty Thousand Dollars (\$50,000.)

8. This respondent admits that Clement Studebaker, Jr. and said George M. Studebaker are persons of large means and amply solvent, but says with reference thereto that neither of them is nor ever has been a partner of any kind, of said firm of Marcuse & Company.

9. This respondent admits the allegation of said amendment wherein and whereby said amendment states that said Richard Yates Hoffman, Clement Studebaker, Jr. and George M. Studebaker are not partners in said partnership of Marcuse & Company and are not liable for any indebtedness of the same.

205 This respondent denies that he now is, or ever has been, a general partner or a special partner of said Marcuse & Company.

10. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency, or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that no person having any legal authority so to do, has made any prayer or petition against this respondent; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued therein against respondent is lawfully issued.

11. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth this respondent denies that he has committed any act of bankruptcy, or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever and he demands that the same may be inquired of by a jury.

12. Wherefore, and for all the matters herein set forth, this respondent shows that this respondent should not be joined or required to answer as defendant, to any petition, answer, amendment to answer, or intervening petition in said cause, or otherwise; and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause, issued by this honorable court should be discharged, and this respondent hence dismissed. George M. Studebaker. Clement Studebaker, Jr.

206 STATE OF ILLINOIS,
County of Cook, ss:

George M. Studebaker, first being duly sworn, on oath deposes and says that he is one of the respondents named in the foregoing response subscribed by him and that he makes this affidavit for himself and for Clement Studebaker, Jr., who is one of the defendants named in said foregoing response, and that he has read said response and knows the contents thereof and that the *statutes* in said response contained are true, except as to those statements therein alleged to be made on information and belief and as to such statements this affiant believes them to be true. George M. Studebaker.

Subscribed and sworn to before me a Notary Public, in and for said County, this 12th day of April, 1920. Hazel McBroom, Notary Public. [Notarial Seal.] My commission expires June 21, 1923. Marquis Eaton, Donald Defrees, Counsel.

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

207

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

[File endorsement omitted.]

That afterwards, on the same day, on to-wit, the 12th day of April, A. D. 1920 there was filed in the office of the Clerk of said Court the response of Richard Yates Hoffman to the Amendment to the Answer of Joseph M. Finn to the petition of C. B. Giles et al., same being in words and figures as follows, to-wit:

208 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Richard Yates Hoffman, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of C. B. Giles, John Janca, and I. Fiegel, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now Comes the said Richard Yates Hoffman, one of the respondents named in the Amendment to the Separate Answer of Joseph M. Finn to the Petition of C. B. Giles, John Janca and I. Fiegel filed in the above entitled cause (herein called the Amendment) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent, and as to this subject matter, as more particularly set forth hereinafter, responds to said Amendment, and shows cause why no subpoena may properly issue against this respondent, and why this respondent may not properly be joined as a defendant, to any petition in said cause, and why this respondent may not properly be made party defendant, or otherwise, to any order herein, and says:

1. That he denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Co. were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment. This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Co. was not essentially different from the relations of said firm with this respondent and the other persons named in said amendment; but avers that said relationship was essentially different. This respondent denies that said sum of One Hundred Ninety Thousand Dollars (\$190,000) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company, special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew R. Morris as general partners.

2. On the contrary this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted, and was signed by divers parties who contemplated contributing thereto divers sums, and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft was ever delivered by or to any of the parties thereto, or ever became effective for any purpose, or that any person ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective, and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht, entered into and executed, among and between themselves, a contract purporting to create a limited partnership, a copy whereof is hereto attached, marked Exhibit "A," and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit "A" is a true copy of the only partnership contract, to which said Finn and Hecht were parties, which ever was created or became effective as a contract, so far as this respondent has any knowledge, information or belief.

This respondent avers that said Richard Yates Hoffman, George M. Studebaker and Clement Studebaker, Jr., were not, nor was either of them, a party to said (Exhibit "A") partnership contract.

4. This respondent denies that it was ever agreed between all of said parties, or by this respondent and any of said parties, that said Hecht and Finn should become, nominally, special or limited partners in said partnership (Exhibit "A"); or that said interest of Hecht and Finn therein should be held for the benefit of all said named persons, or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn

executed a certain trust agreement under date of June 30, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a true copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached, marked Exhibit "B" and is hereby referred to, and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Hecht and said Finn, under and by virtue of said trust agreement, and in order to acquire a trust certificate thereunder and not otherwise, the sum of Fifty Thousand Dollars (\$50,000); that Clement Studebaker, Jr. and said George M. Studebaker never contributed or paid any sum of money to said Hecht and Finn, or either of them.

6. This respondent avers that on June 30, 1917, "Studebaker Bros. Trust" made its check for Fifty Thousand Dollars (\$50,000.00) payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately, and on the same day, endorsed said check and made it thereby payable to the order of said Finn and Hecht, as trustees, and then delivered the same to them, under and by virtue of said trust agreement and not otherwise.

This respondent avers that thereupon said Chicago Title & Trust Company, under and by virtue of said trust agreement, and in consideration of the payment of said Fifty Thousand Dollars (\$50,000), issued its certificate in favor of said Richard Yates Hoffman, bearing date June 30, 1917, for one hundred (100) shares in the Hecht-Finn Trust, a true copy of which certificate is hereto attached and marked Exhibit "C" and is hereby referred to and made part hereof as fully and to the same effect as if incorporated herein. That said certificate was so delivered to said Richard Yates Hoffman on, to wit: the 2nd

211 day of July, 1917; that he thereupon endorsed the same, and delivered it to Studebaker Bros. Trust, which had at all times been the owner of said certificate, as a part of its assets, and a part of its fund.

This respondent avers that except as above stated, said Richard Yates Hoffman had no connection with or relation to said subject matter, and that said "Studebaker Bros. Trust" then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title & Trust Company and which was being administered by it as a fund under a certain trust deed made and executed March 1, 1916, for the benefit of various persons, including, among others, Clement Studebaker, Jr. and George M. Studebaker, and in nowise related to the subject matter of this controversy.

7. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different persons named

in said amendment, and denies that Hecht or Finn, or any signer thereof, signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms. This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers that before the execution thereof it was prepared, with great care, and with frequent revisions, and avers on information and belief that it was made and signed with full knowledge by the signers thereof, of its contents and terms; and that the said certificate issued thereunder as aforesaid, was issued and accepted and paid for as aforesaid, in sole reliance upon the terms of said trust agreement.

This respondent further avers that Clement Studebaker, Jr. and said George M. Studebaker, never at any time made or entered into any agreement or contract whatever, with said Hecht and Finn; and that their sole relation to the subject matter of said "trust agreement" was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of Fifty Thousand Dollars (\$50,000.) with which said certificate was purchased for and on behalf of said Studebaker Bros. Trust, as a part of its property.

8. This respondent admits that Clement Studebaker, Jr. and said George M. Studebaker are persons of large means and amply solvent, but says with reference thereto that neither of them is nor ever has been a partner of any kind, of said firm of Marcuse & Company.

9. This respondent admits the allegation of said amendment wherein and whereby said amendment states that said Richard Yates Hoffman, Clement Studebaker, Jr. and George M. Studebaker are not partners in said partnership of Marcuse & Company and are not liable for any indebtedness of the same.

This respondent denies that he now is, or ever has been, a general partner or a special partner of said Marcuse & Company.

10. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency, or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that no person having any legal authority so to do, has made any prayer or petition against this respondent; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued therein against respondent is lawfully issued.

11. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully re-

serves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth this respondent denies that he has committed any act of bankruptcy, or that he is insolvent, and avers that he should not be declared a bankrupt for any cause whatsoever and he demands that the same may be inquired of by a jury.

12. Wherefore, and for all the matters herein set forth, this respondent shows that this respondent should not be joined or required to answer as defendant, to any petition, answer, amendment to answer, or intervening petition in said cause, or otherwise;
 213 and that no rule of any kind should be entered against this respondent; and respondent prays that the rule to show cause, issued by this honorable court should be discharged, and this respondent hence dismissed. Richard Yates Hoffman.

STATE OF ILLINOIS,
County of Cook, ss:

Richard Yates Hoffman, first being duly sworn, on oath deposes and says that he is the defendant named in the foregoing response subscribed by him and that he has read said response and knows the contents thereof, and that the statements in said response are true except as to those statements therein alleged to be made on information and belief, and as to such statements this affiant believes them to be true. Richard Yates Hoffman.

Subscribed and sworn to before me, a Notary Public in and for said county, this 12th day of April, 1920. Hazel McBroom, Notary Public. (Notarial Seal.) My commission expires June 21, 1923. Marquis Eaton, Donald Defrees, Counsel.

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy)

214

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman, of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy)

[File endorsement omitted.]

That afterwards, on the same day, on to-wit, the 12th day of April, A. D. 1920 there was filed in the office of the Clerk of said Court the response of Richard Yates Hoffman to the Amendment to the Answer of Joseph M. Finn to the petition of Fred Meyer et al., same being in words and figures as follows, to-wit:

215 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Richard Yates Hoffman, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Meyer, E. H. Allen, and Nathan Jacobs, as Amended, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now Comes the said Richard Yates Hoffman, one of the respondents named in the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Meyer, E. H. Allen and Nathan Jacobs, as amended, filed in the above entitled cause, (herein called the Amendment) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent, and as to this subject matter, as more particularly set forth hereinafter, responds to said Amendment, and shows cause why no subpoena may properly issue against this respondent, and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made party defendant, or otherwise, to any order herein, and says:

1. That he denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment. This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relations

of said firm with this respondent and the other persons named in said amendment; but avers that said relationship was essentially different. This respondent denies that said sum of One
216 Hundred Ninety Thousand Dollars (\$190,000.) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company, special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew R. Morris as general partners.

2. On the contrary this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted, and was signed by divers parties who contemplated contributing thereto divers sums, and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft was ever delivered by or to any of the parties thereto, or ever became effective for any purpose, or that any person ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective, and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed, among and between themselves, a contract purporting to create a limited partnership, a copy whereof is hereto attached, marked Exhibit "A", and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit "A" is a true copy of the only partnership contract, to which said Finn and Hecht were parties, which ever was created or became effective as a contract, so far as this respondent has any knowledge, information or belief.

This respondent avers that said Richard Yates Hoffman, George M. Studebaker and Clement Studebaker, Jr., were not, nor was either of them, a party to said (Exhibit "A") partnership contract.

4. This respondent denies that it was ever agreed between all of said parties, or by this respondent and any of said parties, that said Hecht and Finn should become, nominally, special or limited
217 partners in said partnership (Exhibit "A"), or that said interest of Hecht and Finn therein should be held for the benefit of all said named persons, or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a true copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached, marked Exhibit "B" and is hereby referred to, and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Hecht and said Finn, under and by virtue of said trust agreement, and in order to acquire a trust certificate thereunder and not otherwise, the sum of Fifty Thousand Dollars (\$50,000): that Clement Studebaker, Jr. and said George M. Studebaker never contributed or paid any sum of money to said Hecht and Finn, or either of them.

6. This respondent avers that on June 30, 1917, "Studebaker Bros. Trust" made its check for Fifty Thousand Dollars (\$50,000.00) payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately, and on the same day, endorsed said check and made it thereby payable to the order of said Finn and Hecht, as trustees, and then delivered the same to them, under and by virtue of said trust agreement and not otherwise.

This respondent avers that thereupon said Chicago Title & Trust Company, under and by virtue of said trust agreement, and in consideration of the payment of said Fifty Thousand Dollars (\$50,000), issued its certificate in favor of said Richard Yates Hoffman, bearing date June 30, 1917, for one hundred (100) shares in the Hecht-Finn Trust, a true copy of which certificate is hereto attached and marked Exhibit "C" and is hereby referred to and made part hereof as fully and to the same effect as if incorporated herein. That said certificate was so delivered to said Richard Yates Hoffman on, 218 to wit: the 2nd day of July, 1917; that he thereupon endorsed the same, and delivered it to Studebaker Bros. Trust, which had at all times been the owner of said certificate, as a part of its assets, and a part of its fund.

This respondent avers that except as above stated, said Richard Yates Hoffman had no connection with or relation to said subject matter, and that said "Studebaker Bros. Trust" then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title & Trust Company and which was being administered by it as a fund under a certain trust deed made and executed March 1, 1916, for the benefit of various persons, including, among others, Clement Studebaker, Jr. and George M. Studebaker, and in nowise related to the subject matter of this controversy.

7. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different persons named in said amendment, and denies that Hecht or Finn, or any signer thereof, signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms. This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers that before the execution thereof it was prepared, with great care, and with frequent revisions, and avers on information and belief that it was made and

signed with full knowledge by the signers thereof, of its contents and terms; and that the said certificate issued thereunder as aforesaid, was issued and accepted and paid for as aforesaid, in sole reliance upon the terms of said trust agreement.

This respondent further avers that Clement Studebaker, Jr. and said George M. Studebaker, never at any time made or entered into any agreement or contract whatever, with said Hecht and Finn; and that their sole relation to the subject matter of said "trust agreement" was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of Fifty Thousand Dollars (\$50,000) with which said certificate was purchased for and on behalf of said Studebaker Bros. Trust, as a part of its property.

8. This respondent admits that Clement Studebaker, Jr. and said George M. Studebaker are persons of large means and amply solvent, but says with reference thereto that neither of them is nor ever has been a partner of any kind, of said firm of Marcuse & Company.

219 9. This respondent admits the allegation of said amendment wherein and whereby said amendment states that said Richard Yates Hoffman, Clement Studebaker, Jr. and George M. Studebaker are not partners in said partnership of Marcuse & Company and are not liable for any indebtedness of the same.

This respondent denies that he now is or ever has been, a general partner or a special partner of said Marcuse & Company.

10. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency, or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that no person having any legal authority so to do, has made any prayer or petition against this respondent; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued therein against respondent is lawfully issued.

11. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth this respondent denies that he has committed any act of bankruptcy, or that he is insolvent, and avers that he should not be declared a bankrupt for any cause whatsoever and he demands that the same may be inquired of by a jury.

12. Wherefore, and for all the matters herein set forth, this respondent shows that this respondent should not be joined or required to answer as defendant, to any petition, answer, amendment to answer, or intervening petition in said cause, or otherwise;
220 and that no rule of any kind should be entered against this respondent; and respondent prays that the rule to show cause, issued by this honorable court should be discharged, and this respondent hence dismissed. Richard Yates Hoffman.

STATE OF ILLINOIS,
County of Cook, ss:

Richard Yates Hoffman, first being duly sworn, on oath deposes and says that he is the defendant named in the foregoing response subscribed by him and that he has read said response and knows the contents thereof, and that the statements in said response are true except as to those statements therein alleged to be made on information and belief, and as to such statements this affiant believes them to be true. Richard Yates Hoffman.

Subscribed and sworn to before me, a Notary Public in and for said county, this 12th day of April, 1920. Hazel McBroom, Notary Public. (Notarial Seal.) My commission expires June 21—1923. Marquis Eaton, Donald Defrees, Counsel.

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

221

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

[File endorsement omitted.]

That afterwards, on the same day, *on to-wit*, the 12th day of April, A. D. 1920 there was filed in the office of the Clerk of said Court the responses of Richard Yates Hoffman to the Amendment to the Answer of Joseph M. Finn to the petition of Harold Lachman, same being in words and figures as follows: *to-wit*:

222 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Richard Yates Hoffman, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now Comes the said Richard Yates Hoffman, one of the respondents named in the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman filed in the above entitled cause (herein called the Amendment) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent, and as to this subject matter, as more particularly set forth hereinafter, responds to said amendment, and shows cause why no subpœna may properly issue against this respondent, and why this respondent may not properly be joined as a defendant to any Petition in said cause, and why this respondent may not properly be made party defendant, or otherwise, to any order herein, and says:

1. That he denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment. This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relations of said firm with this respondent and the other persons named in said amendment; but avers that said relationship was essentially different. This respondent denies that said sum of One

223 Hundred Ninety Thousand Dollars (\$190,000) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company, special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted, and was

signed by divers parties who contemplated contributing thereto divers sums, and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft was ever delivered by or to any of the parties thereto, or ever became effective for any purpose, or that any person ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective, and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed, among and between themselves, a contract purporting to create a limited partnership, a copy whereof *if* hereto attached, marked Exhibit "A," and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit "A" is a true copy of the only partnership contract, to which said Finn and Hecht were parties, which ever was created or became effective as a contract, so far as this respondent has any knowledge, information or belief.

This respondent avers that said Richard Yates Hoffman, George M. Studebaker and Clement Studebaker, Jr., were not nor was either of them, a party to said (Exhibit "A") partnership contract.

4. This respondent denies that it was ever agreed between all of said parties, or by this respondent and any of said parties, that said Hecht and Finn should become, nominally, special or limited partners in said partnership (Exhibit "A"), or that said interest of Hecht and Finn therein should be held for the benefit of all said named persons, or that for the purpose of carrying into effect
224 such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a true copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached, marked Exhibit "B" and is hereby referred to, and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Hecht and said Finn, under and by virtue of said trust agreement, and in order to require a trust certificate thereunder and not otherwise, the sum of Fifty Thousand Dollars (\$50,000); that Clement Studebaker, Jr. and said George M. Studebaker never contributed or paid any sum of money to said Hecht and Finn, or either of them.

6. This respondent avers that on June 30, 1917, "Studebaker Bros. Trust" made its check for Fifty Thousand Dollars (\$50,000.00) payable to the order of Richard Yates Hoffman and de-

livered the same to him; that said Richard Yates Hoffman immediately, and on the same day, endorsed said check and made it thereby payable to the order of said Finn and Hecht, as trustees, and then delivered the same to them, under and by virtue of said trust agreement and not otherwise.

This respondent avers that thereupon said Chicago Title & Trust Company, under and by virtue of said trust agreement, and in consideration of the payment of said Fifty Thousand Dollars (\$50,000), issued its certificate in favor of said Richard Yates Hoffman, bearing date June 30, 1917, for one hundred (100) shares in the Hecht-Finn Trust, a true copy of which certificate is hereto attached and marked Exhibit "C" and is hereby referred to and made part hereof as fully and to the same effect as if incorporated herein. That said certificate was so delivered to said Richard Yates Hoffman on, to-wit: the 2nd day of July, 1917; that he thereupon endorsed the same, and delivered it to Studebaker Bros. Trust, which had at all times
225 been the owner of said certificate, as a part of its assets, and a part of its fund.

This respondent avers that except as above stated, said Richard Yates Hoffman had no connection with or relation to said subject matter, and that said "Studebaker Bros. Trust" then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title & Trust Company and which was being administered by it as a fund under a certain trust deed made and executed March 1, 1916, for the benefit of various persons, including, among others, Clement Studebaker, Jr. and George M. Studebaker, and in nowise related to the subject matter of this controversy.

7. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different persons named in said amendment, and denies that Hecht or Finn, or any signer thereof, signed said trust agreement upon an understanding that it should create any relationship whatever, except only that created by its terms. This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers that before the execution thereof it was prepared, with great care, and with frequent revisions, and avers on information and belief that it was made and signed with full knowledge by the signers thereof, of its contents and terms; and that the said certificate issued thereunder as aforesaid, was issued and accepted and paid for as aforesaid, in sole reliance upon the terms of said trust agreement.

This respondent further avers that Clement Studebaker, Jr. and George M. Studebaker, never at any time made or entered into any agreement or contract whatever, with said Hecht and Finn; and that their sole relation to the subject matter of said "trust agreement" was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of Fifty Thousand Dollars (\$50,000.) with which said certificate was purchased for and on behalf of said Studebaker Bros. Trust, as a part of its property.

8. This respondent admits that Clement Studebaker, Jr. and id George M. Studebaker are persons of large means and amply

solvent, but says with reference thereto that neither of them is nor ever has been a partner of any kind, of said firm of Marcuse & Company.

226 9. This respondent admits the allegations of said amendment wherein and whereby said amendment states that said Richard Yates Hoffman, Clement Studebaker, Jr. and George M. Studebaker are not partners in said partnership of Marcuse & Company and are not liable for any indebtedness of the same.

This respondent denies that he now is, or ever has been, a general partner or a special partner of said Marcuse & Company.

10. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency, or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that no person having any legal authority so to do, has made any prayer or petition against this respondent; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued therein against respondent is lawfully issued.

11. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth this respondent denies that he has committed any act of bankruptcy, or that he is insolvent, and avers that he should not be declared a bankrupt for any cause whatsoever and he demands that the same may be inquired of by a jury.

12. Wherefore, and for all the matters herein set forth, this respondent shows that this respondent should not be joined or required to answer as defendant, to any petition, answer, amendment to answer, or intervening petition in said cause, or otherwise; and that no rule of any kind should be entered against this
227 respondent; and respondent prays that the rule to show cause, issued by this honorable court should be discharged, and this respondent hence dismissed. Richard Yates Hoffman.

STATE OF ILLINOIS,
County of Cook, ss:

Richard Yates Hoffman, first being duly sworn, on oath deposes and says that he is the defendant named in the foregoing response subscribed by him and that he has read said response and knows

the contents thereof, and that the statements in said response are true except as to those statements therein alleged to be made on information and belief, and as to such statements this affiant believes them to be true. Richard Yates Hoffman.

Subscribed and sworn to before me, a Notary Public in and for said county, this 12th day of April, 1920. Hazel McBroom, Notary Public. (Notarial Seal.) My commission expires June 21, 1923. Marquis Eaton, Donald Defrees, Counsel.

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

228

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman, of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards, to wit, on the 12th day of April, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, the Response of Henry Vette; same being in the words and figures following, to wit:—

229 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Henry Vette, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of C. B. Giles, John Janca, and I. Feigel, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now comes Henry Vette, one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the petition of C. B. Giles, John Janca and I. Feigel filed in the above entitled cause (herein called "the amendment") and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendments and shows cause why no subpoena may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with this respondent and the other persons named in said amendment, but avers that said relationship was essentially different. This respondent denies
230 that said sum of one hundred ninety thousand dollars (\$190,000.00) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said copartnership of Marcuse & Company and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April 1917 a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and and who contemplated forming a limited partnership. This respondent denies however, that said signed draft was ever delivered by or to any of the parties thereof, or ever became effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit A is a true copy of the only partnership contract to which said Hecht and Finn were parties which ever became effective as a contract so far as this respondent has any knowledge, information, or belief and this respondent avers that this respondent was not a party to said (Exhibit A) partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally special or limited partners in said partnership (Exhibit A) or that the interest of Hecht and Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30th, 1917, as alleged in said amendment.

231 5. On the contrary, this respondent avers that on and under date of June 30th, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise, the sum of twenty-five thousand dollars (\$25,000.00) and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of twenty-five thousand dollars (\$25,000.00) the certificate of said Chicago Title & Trust Co. in favor of this respondent bearing date of June 30th, 1917, for fifty shares in said The Hecht-Finn Trust a true copy of which certificate is hereto attached marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificate was so delivered to this respondent as aforesaid on or about the 2nd day of July, 1917.

6. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different persons named in said amendment and denies that said Hecht or Finn signed said

trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with full knowledge by the signers thereof of its contents and terms, and that the said certificate issued thereunder as aforesaid was issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial
232 means and amply solvent, but says with reference thereto that he is not, nor has he ever been a partner of any kind in or of said firm of Marcuse & Co.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co. and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Company.

9. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

11. Wherefore, and for all the matters herein set forth this respondent shows that this respondent should not be joined or required to answer as a defendant to any petition, answer, amendment to
233 answer, or intervening petition in said cause or otherwise and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause

issued by this honorable court should be discharged and this respondent hence dismissed forthwith. Henry Vette. Busby, Weber, Miller & Donovan, Attorneys for said respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Henry Vette being first duly sworn on oath deposes and says that he has heard read the foregoing response by him subscribed and knows the contents thereof and that the statements therein contained are true except as to those statements therein alleged to be made upon information and belief, and as to such statements this affiant believes them to be true. Henry Vette.

Subscribed and sworn to before me, a notary public, this 10 day of April, A. D. 1920. Arthur J. Donovan, Notary Public. (N. S.)

Copy.

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

234 **Exhibit "C" to Response of Henry Vette.**

Certificate No. Five.

60 shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Henry Vette is the owner of sixty shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this

certificate is issued, to the same extent and in like manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth, and the registered holder hereof shall be entitled from time to time to distribution from said trust and in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in anywise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

235 Dated, at Chicago, Illinois, this 30th day of June, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriott, its Vice-President. (Corporate Seal.) Attest: R. W. Boddinghouse, its Secretary.

[File endorsement omitted.]

And afterwards, to wit, on the 12th day of April, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Response of Henry Vette; same being in the words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Henry Vette, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now comes Henry Vette one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the petition of Harold Lachman filed in the above entitled cause (herein called the amendment) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as

236 to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpoena may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Henry Vette, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman Heretofore Filed in said Cause.

Now comes Henry Vette one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the petition of Harold Lachman filed in the above entitled cause (herein called the amendment) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpoena may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent
237 may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with the respondent and the other persons named in said amendment, but avers that said relationship was essentially different. This respondent denies that said sum of one hundred ninety thousand dollars (\$190,000.00) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to

be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April 1917 a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and who contemplated forming a limited partnership. This respondent denies however, that said signed draft was ever delivered by or to any of the parties thereof, or ever became effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

238 This respondent avers that said Exhibit A is a true copy of the only partnership contract to which said Hecht and Finn were parties which ever became effective as a contract so far as this respondent has any knowledge, information, or belief and this respondent avers that this respondent was not a party to said (Exhibit A) partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally special or limited partners in said partnership (Exhibit A) or that the interest of Hecht and Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30th, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30th, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise, the sum of Twenty-five thousand dollars (\$25,000.00) and there was deliv-

ered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of twenty-five thousand dollars (\$25,000.00) the certificate of said Chicago Title & Trust Co. in favor of this respondent bearing date of June 30th, 1917, for fifty shares in said The Hecht-Finn Trust a true copy of which certificate is hereto attached marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificate was so delivered to this respondent as aforesaid on or about the 2nd day of July, 1917.

6. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different
239 persons named in said amendment and denies that said Hecht or Finn signed said trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with full knowledge by the signers thereof of its contents and terms, and that the said certificate issued thereunder as aforesaid was issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial means and amply solvent, but says with reference thereto that he is not, nor has he ever been a partner of any kind in or of said firm of Marcuse & Co.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co. and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Company.

9. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or

for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he
240 respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

11. Wherefore, and for all the matters herein set forth this respondent shows that this respondent should not be joined or required to answer as a defendant to any petition, answer, amendment to answer, or intervening petition in said cause or otherwise and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause issued by this honorable court should be discharged and this respondent hence dismissed forthwith. Henry Vette. Busby, Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Henry Vette being first duly sworn on oath deposes and says that he has heard read the foregoing response by him subscribed and knows the contents thereof and that the statements therein contained are true except as to those statements therein alleged to be made upon information, and belief and as to such statements this affiant believes them to be true. Henry Vette.

Subscribed and sworn to before me, a notary public, this 10th day of April, A. D. 1920. Arthur J. Donovan, Notary Public. (N. S.) Copy.

241

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Henry Vette of which Exhibit "C" to the Response of Henry Vette to the amendment of Joseph M. Finn to the Petition of C. B. Giles, et al., is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards, to wit, on the 12th day of April, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Response of Henry Vette; same being in the words and figures following, to wit:

242 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Henry Vette, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Mayer, E. H. Allen, and Nathan Jacobs as Amended and Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now comes Henry Vette, one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the petition as amended of Fred Mayer, E. H. Allen and Nathan Jacobs filed in the above entitled cause (herein called "the amendment") and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpoena may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with this respondent and
243 the other persons named in said amendment, but avers that said relationship was essentially different. This respondent

denies that said sum of one hundred ninety thousand dollars (\$190,000.00) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said copartnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April, 1917 a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and who contemplated forming a limited partnership. This respondent denies however, that said signed draft was ever delivered by or to any of the parties thereof, or ever became effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit A is a true copy of the only partnership contract to which said Hecht and Finn were parties which ever became effective as a contract so far as this respondent has any knowledge, information, or belief and this respondent avers that this respondent was not a party to said (Exhibit A) partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally special or limited partners in said partnership (Exhibit A) or that the interest of Hecht and

244 Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30th, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30th, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise, the sum of twenty-five thousand dollars (\$25,000.00) and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of twenty-five thousand dollars (\$25,000.00) the certificate of said Chicago Title & Trust Company, in favor of this respondent bearing date of June 30th, 1917, for fifty shares in the said The Hecht-Finn Trust a true copy of which certificate is hereto attached marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificate was so delivered to this respondent as aforesaid on or about the 2nd day of July, 1917.

6. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different persons named in said amendment and denies that said Hecht or Finn signed said trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with full knowledge by the signers thereof of its contents and terms, and that
245 the said certificate issued thereunder as aforesaid was issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial means and amply solvent, but says with reference thereto that he is not, nor has he ever been a partner of any kind in or of said firm of Marcuse & Co.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co. and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Company.

9. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such juris-

diction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

11. Wherefore, and for all the matters herein set forth
246 this respondent shows that this respondent should not be joined or required to answer as a defendant to any petition, answer, amendment to answer, or intervening petition in said cause or otherwise and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause issued by this honorable court should be discharged and this respondent hence dismissed forthwith. Henry Vette. Busby, Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS.

County of Cook, ss.

Henry Vette being first duly sworn on oath deposes and says that he has heard read the foregoing response by him subscribed and knows the contents thereof and that the statements therein contained are true except as to those statements therein alleged to be made upon information, and belief and as to such statements this affiant believes them to be true. Henry Vette.

Subscribed and sworn to before me, a notary public, this 10th day of April, A. D. 1920. Arthur J. Donovan, Notary Public. (N. S.)

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

247

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Henry Vette of which Exhibit "C" to the Response of Henry Vette to the amendment of Joseph M. Finn to the Petition of C. B. Giles, et al., is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards, to wit, on the 12th day of April, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Response of Peter M. Zuncker; same being in the words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Peter M. Zuncker, Responder, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Mayer, E. H. Allen, and Nathan Jacobs, as Amended and Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now comes Peter M. Zuncker, one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the Petition as amended of Fred Mayer, E. H. Allen and Nathan Jacobs filed in the above entitled cause (herein called "the amendment") and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully
248 denying the jurisdiction of this court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpœna may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made a party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with this respondent and the other persons named in said amendment, but avers that said rela-

tionship was essentially different. This respondent denies that said sum of one hundred ninety thousand dollars (\$190,000.00) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft was ever delivered by or to any of the parties thereof, or ever became effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into
249 and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit A is a true copy of the only partnership contract to which said Hecht and Finn were parties which ever became effective as a contract so far as this respondent has any knowledge, information, or belief and this respondent avers that this respondent was not a party to said (Exhibit A) partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally special or limited partners in said partnership (Exhibit A) or that the interest of Hecht and Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30th, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30th, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked

"Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise, the sum of twenty-five thousand dollars (\$25,000.00) and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of twenty-five thousand dollars (\$25,000.00) the certificate of said Chicago Title & Trust Co. in favor of this respondent bearing date of June 30th, 1917, for fifty shares in said The Hecht-Finn Trust
250 a true copy of which certificate is hereto attached marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificate was so delivered to this respondent as aforesaid on or about the 2nd day of July, 1917.

6. This respondent admits that said Trust agreement was prepared by a number of attorneys representing the different persons named in said amendment and denies that said Hecht or Finn signed said trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with full knowledge by the signers thereof of its contents and terms, and that the said certificate issued thereunder as aforesaid was issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial means and amply solvent, but says with reference thereto that he is not, nor has he ever been a partner of any kind in or of said firm of Marcuse & Co.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co. and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Company.

9. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

11. Wherefore, and for all the matters herein set forth this respondent shows that this respondent should not be joined or required to answer as a defendant to any petition, answer, amendment to answer, or intervening petition in said cause or otherwise and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause issued by this honorable court should be discharged and this respondent hence dismissed forthwith. Peter M. Zuncker. Busby, Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Peter M. Zuncker, being first duly sworn on oath deposes and says that he has heard read the foregoing response by him subscribed and knows the contents thereof and that the statements therein contained are true except as to those statements therein alleged to be made upon information and belief and as to such statements this affiant believes them to be true. Peter M. Zuncker.

Subscribed and sworn to before me, a notary public, this 10th day of April, A. D. 1920. Arthur J. Donovan, Notary Public.

252

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to Response.

Certificate No. 6.

50 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Peter M. Zuncker, is the owner of Fifty shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect, as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered, holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of the Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 30th day of June, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriott, Its Vice-President. (Corporate Seal.) Attest: R. W. Boddinhouse, Its Secretary.

[File endorsement omitted.]

And afterwards, to wit, on the 12th day of April, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Response of Peter M. Zuncker; same being in the words and figures following, to wit:

254 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Peter M. Zuncker, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of C. B. Giles, John Janca, and I. Feigel, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now comes Peter M. Zuncker, one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the petition of C. B. Giles, John Janca and I. Feigel filed in the above entitled cause (herein called "the amendment") and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpœna may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with this respondent and the other persons named in said amendment, but avers that said relationship was essentially different. This respondent denies that said

sum of one hundred ninety thousand dollars (\$190,000.00)
 255 was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft was ever de-

livered by or to any of the parties thereof, or ever became effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequent and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit A is a true copy of the only partnership contract to which said Hecht and Finn were parties which ever became effective as a contract so far as this respondent has any knowledge, information, or belief and this respondent avers that this respondent was not a party to said (Exhibit A) partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally special or limited partners in said partnership (Exhibit A) or that the interest of Hecht and Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30th, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30th, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise, the sum of twenty-five thousand dollars (\$25,000.00) and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of twenty-five thousand dollars (\$25,000.00) the certificate of said Chicago Title & Trust Co. in favor of this respondent bearing date of June 30th, 1917, for fifty shares in said The Hecht-Finn Trust, a true copy of which certificate is hereto attached marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificate was so delivered to this respondent as aforesaid on or about the 2nd day of July, 1917.

6. This respondent admits that said Trust agreement was prepared by a number of attorneys representing the different persons named in said amendment and denies that said Hecht or Finn signed said trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with full knowledge by the signers thereof of its contents and terms, and that the said certificate issued thereunder as aforesaid was issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial means and amply solvent, but says with reference thereto that he is
257 not, nor has he ever been a partner of any kind in or of said firm of Marcuse & Co.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co. and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Company.

9. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

11. Wherefore, and for all the matters herein set forth this respondent shows that this respondent should not be joined or re-

quired to answer as a defendant to any petition, answer, amend-
ment to answer, or intervening petition in said cause or other-
258 wise and that no rule of any kind should be entered against
this respondent and respondent prays that the rule to show
cause issued by this honorable court should be discharged and this
respondent hence dismissed forthwith. Peter M. Zuncker, Busby,
Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Peter M. Zuncker, being first duly sworn on oath deposes and
says that he has heard read the foregoing response by him sub-
scribed and knows the contents thereof and that the statements
therein contained are true except as to those statements therein
alleged to be made upon information and belief and as to such
statements this affiant believes them to be true. Peter M. Zuncker

Subscribed and sworn to before me, a notary public, this 10th day
of April, A. D. 1920. Arthur J. Donovan, Notary Public. (No-
tarial Seal.)

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract
purporting to create a limited partnership of which Exhibit "A"
to the Response of Clement Studebaker, Jr., and George M. Stude-
baker to the Amendment to the Separate Answer of Joseph M.
Finn to the Petition of Harold Lachman is a true, full and correct
copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument
purporting to create the Hecht-Finn Trust of which Exhibit "B" to
the Response of Clement Studebaker, Jr., and George M. Studebaker
to the Amendment to the Separate Answer of Joseph M. Finn to
the Petition of Harold Lachman is a true, full and correct copy.)

259

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Cer-
tificate issued in the name of Peter M. Zuncker of which Exhibit
"C" to the Response of Peter M. Zuncker to the Amendment to the
Separate Answer of Joseph M. Finn to the Petition of Fred Mayer,
et al., is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards, to wit, on the 12th day of April, A. D. 1920,
there was filed in the Clerk's Office of said Court, in the above en-
titled cause, a Response of Peter M. Zuncker; same being in the
words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Response of Peter M. Zuncker, Respondent, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman, Heretofore Filed in Said Cause.

[Filed Apr. 12, 1920.]

Now comes Peter M. Zuncker, one of the respondents named in the amendment to the separate answer of Joseph M. Finn to the petition of Harold Lachman filed in the above entitled cause (herein called the amendment) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court
260 as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpoena may be properly issued against this respondent and why this respondent may not properly be joined as a defendant to any petition in said cause, and why this respondent may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with this respondent and the other persons named in said amendment, but avers that said relationship was essentially different. This respondent denies that said sum of one hundred ninety thousand dollars (\$190,000.00) was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said co-partnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft was ever delivered by or to any of the parties thereof, or ever became

effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independently thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said Exhibit A is a true copy of the only partnership contract to which said Hecht and Finn were parties which ever became effective as a contract so far as this respondent has any knowledge, information, or belief and this respondent avers that this respondent was not a party to said (Exhibit A) partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally special or limited partners in said partnership (Exhibit A) or that the interest of Hecht and Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding, said Hecht and Finn executed a certain trust agreement under date of June 30th, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30th, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise, the sum of twenty-five thousand dollars (\$25,000.00) and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of twenty-five thousand dollars (\$25,000.00) the certificate of said Chicago Title & Trust Co. in favor of this respondent bearing date of June 30th, 1917, for fifty shares in said The Hecht-Finn Trust, a true copy of which certificate is hereto attached marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

Said certificate was so delivered to this respondent as aforesaid on or about the 2nd day of July, 1917.

6. This respondent admits that said Trust agreement was prepared by a number of attorneys representing the different persons named in said amendment and denies that said Hecht or Finn signed said trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with full knowledge by the signers thereof of its contents and terms, and that the said certificate issued thereunder as aforesaid was issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial means and amply solvent, but says with reference thereto that he is not, nor has he ever been a partner of any kind in or of said firm of Marcuse & Co.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co. and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Company.

9. This respondent further respectfully represents and shows that this court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein, and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

11. Wherefore, and for all the matters herein set forth this respondent shows that this respondent should not be joined or required to answer as a defendant to any petition, answer, amendment to answer, or intervening petition in said cause or otherwise and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause issued by this honorable court should be discharged and this respondent hence dismissed forthwith. Peter M. Zuncker, Busby, Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Peter M. Zuncker being first duly sworn on oath deposes and says that he has heard read the foregoing response by him subscribed and knows the contents thereof and that the statements therein contained are true except as to those statements therein alleged to be made upon information and belief and as to such statements this affiant believes them to be true. Peter M. Zuncker.

Subscribed and sworn to before me, a notary public, this 10th day of April, A. D. 1920. Arthur J. Donovan, Notary Public. (Notarial Seal.) Copy.

264

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Jacob M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to This Response.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Peter M. Zuncker of which Exhibit "C" to the Response of Peter M. Zuncker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Fred Mayer, et al., is a true, full and correct copy.)

[File endorsement omitted.]

That afterwards, on the same day, on to-wit, the 12th day of April, A. D. 1920, there was filed in the office of the Clerk of said Court the

response of Theodore Regensteiner to the Amendment to the Answer of Joseph M. Finn to the petition of Harold Lachman, same being in words and figures as follows, to-wit:

265 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

**The Separate Response of Theodore Regensteiner, Respondent,
to the Amendment to the Separate Answer of Joseph M. Finn
to the Petition of Harold Lachman, Heretofore Filed in Said
Cause.**

[Filed Apr. 12, 1920.]

Now comes Theodore Regensteiner, one of the respondents named in the amendment to the separate answer of Joseph M. Finn, to the petition of Harold Lachman filed in the above entitled cause (herein called the amendment) and not submitting himself to the jurisdiction of this Court, nor waiving any question of jurisdiction of this Court here, and respectfully denying the jurisdiction of this Court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said amendment and shows cause why no subpoena may be properly issued against this respondent and why this respondent may not properly be made party defendant or otherwise to any order herein and says:

1. Respondent denies that said Joseph M. Finn and said Frank A. Hecht in assuming or attempting to assume the position of special partners in the said firm of Marcuse & Company were not acting on behalf of themselves alone, but were acting on behalf of this respondent and the other persons named in said amendment.

This respondent denies that the relationship of said Hecht and Finn to the firm of Marcuse & Company was not essentially different from the relationship of said firm with this respondent and the other persons named in said amendment, but avers that said relationship was essentially different.

This respondent denies that said sum of One Hundred
266 Ninety Thousand (\$190,000) Dollars was contributed by the persons as alleged in said amendment as partners in said firm of Marcuse & Company special or otherwise. This respondent denies that all of said parties as mentioned and described in said amendment executed an instrument purporting to be an instrument whereby all of said parties agreed to become limited partners in said copartnership of Marcuse & Company with said Ben Marcuse and Lew H. Morris as general partners.

2. On the contrary, this respondent avers that early in April, 1917, a contemplated contract of limited partnership was drafted and was signed by divers parties who contemplated contributing thereto divers sums and who contemplated forming a limited partnership. This respondent denies, however, that said signed draft

was ever delivered by or to any of the parties thereof, or ever became effective for any purpose or that any person whatever ever contributed any sum of money to it.

This respondent avers that said draft remained undelivered and was never perfected or consummated as a contract and never became effective and that all concerned therein knew and understood that it never became or was effective as a contract of partnership.

3. This respondent avers that subsequently and independent thereof said Marcuse, Morris, Finn and Hecht entered into and executed among and between themselves a contract purporting to create a limited partnership, a copy whereof is hereto attached marked "Exhibit A" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that said "Exhibit A" is a true copy of the only partnership contract to which said Hecht and Finn were parties, which ever became effective as a contract so far as this respondent has any knowledge, information or belief and this respondent avers that this respondent was not a party to said "Exhibit A" partnership contract.

4. This respondent denies that it was ever agreed between all of said parties or by this respondent and any of said parties that said Hecht and Finn should become nominally, special or limited partners in said partnership "Exhibit A" or that the interest of Hecht and Finn therein should be held for the benefit of said named persons or that for the purpose of carrying into effect such agreement or understanding said Hecht and Finn executed a certain
267 trust agreement under date of June 30th, 1917, as alleged in said amendment.

5. On the contrary, this respondent avers that on and under date of June 30, 1917, said Hecht and Finn made and executed a certain trust agreement to and in favor of Chicago Title and Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

6. This respondent avers that a copy of said agreement (hereinafter for brevity called "trust agreement") is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein.

This respondent avers that upon the execution of said trust agreement, this respondent paid to said Frank A. Hecht and said Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder and not otherwise the sum of Twenty-eight Thousand Five Hundred (\$28,500) Dollars and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of \$28,500 the certificate of said Chicago Title & Trust Company in favor of this respondent bearing date of June 30, 1917, for fifty-seven shares in said The Hecht-Finn Trust, which certificate this respondent subsequently surrendered to the said Chicago Title & Trust Company for the purpose of having substituted therefor two certificates, one issued for thirty-seven shares issued to this respondent and the other for twenty shares issued to

Israel Grollman, in the said The Hecht-Finn Trust, true copies of such certificates are hereto attached and marked "Exhibits C" and "D," respectively and are hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificates were so delivered to said Regensteiner and Grollman on or about the 2nd day of July, 1917.

6. This respondent admits that said trust agreement was prepared by a number of attorneys representing the different persons named in said amendment and denies that said Hecht and Finn signed said trust agreement upon an understanding that it should create any relationship whatever except only that created by its terms.

This respondent denies that any of the terms of said trust agreement were inadvertently used, but avers on information and belief that before the execution thereof, it was prepared with great care and with frequent revisions and was made and signed with
268 full knowledge by the signers, thereof of its contents and terms, and that the said certificates issued thereunder as aforesaid were issued, accepted and paid for as aforesaid in sole reliance upon the terms of said trust agreement.

7. This respondent admits that he is a person of substantial means and amply solvent, but says with reference thereto that he is not, nor has he ever been, a partner of any kind in or of said firm of Marcuse & Company.

8. This respondent admits the allegation of said amendment wherein and whereby said amendment states that this respondent is not a partner in said partnership of Marcuse & Co., and is not liable for any indebtedness of said firm.

This respondent denies that he now is or ever has been a general or a special or limited partner of said Marcuse & Co.

9. This respondent further respectfully represents and shows that this Court is without jurisdiction to make this respondent a party in said cause, or to require him to answer therein; that no person has alleged in any pleading in said cause that respondent is a partner in the partnership of Marcuse & Company; that no person has alleged in said cause insolvency or an act of bankruptcy of this respondent; that no person has filed a bond in that behalf in this Court; that said Joseph M. Finn is wholly without right or standing in law to invoke or require any response from this respondent, or to make him a party to any petition or proceeding herein; and that no subpoena or process issued herein against respondent is lawfully issued.

10. This respondent does not submit himself to the jurisdiction of this Court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon, or for the purpose of having his alleged partnership with the above alleged bankrupts determined in this proceeding, and he respectfully reserves the right to object to the jurisdiction of this Court to determine the question of his alleged partnership with any of the above named alleged bankrupts, or the said alleged bankrupt firm to adjudge him a bankrupt, and maintaining and not waiving any of his rights as

above set forth, this respondent denies that he has committed any act of bankruptcy or that he is insolvent and avers that he should not be declared a bankrupt for any cause whatsoever, and he demands that the same may be inquired of by a jury.

269 11. Wherefore, and for all the matters herein set forth this respondent shows that this respondent should not be joined or required to answer as a defendant to any petition, answer, amendment to answer, or intervening petition in said cause or otherwise and that no rule of any kind should be entered against this respondent and respondent prays that the rule to show cause issued by this Honorable Court should be discharged and this respondent hence dismissed forthwith. Theodore Regensteiner. Louis Grollman, Attorney for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Theodore Regensteiner being first duly sworn on oath deposes and says that he has heard read the foregoing response by him subscribed and knows the contents thereof, and that the statements therein contained are true except as to those statements therein alleged to be made upon information, and belief and as to such statements this affiant believes them to be true. Theodore Regensteiner.

Subscribed and sworn to before me this 12th day of April, A. D. 1920. Louis Grollman, Notary Public. (Notarial Seal.)

Exhibit "A" to This Response.

(Here follows in the original instrument a copy of the contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Response.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to Response.

Certificate No. 8.

37 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Theodore Regensteiner is the owner of Thirty-seven shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect, as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation and by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 2nd day of July, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriot, Its Vice-President. (Corporate Seal.) Attest: R. W. Boddinhouse, Its Secretary.

271

Exhibit "D" to Response.

Certificate No. 7.

20 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Israel Grollman is the owner of Twenty shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect, as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation and by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for the purpose.

272 Dated at Chicago, Illinois, this 2nd day of July, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriot, Its Vice-President. (Corporate Seal.) Attest: R. W. Boddinghouse, Its Secretary.

Endorsed: No. 28339. U. S. District Court, Northern District of Illinois. In re Ben Marcuse, et al., Alleged Bankrupts. Separate Response of Theodore Regensteiner. Filed April 12, 1920, at 4.35 o'clock P. M. John H. R. Jamar, Clerk.

Petition of I. Feigel.

And afterwards, to-wit, on the 14th day of April, 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of Apr. 14, 1920.

On motion of Theodore Regensteiner, the Court being fully advised in the premises, it is ordered that the answer of said Theodore Regensteiner to the amendment to the answer of Joseph M. Finn, to the petition of Harold Lachman, stand as his answer to the amendments to the answers of Joseph M. Finn to the petitions of Fred Meyer and C. B. Giles.

And afterwards on to-wit the 14th day of April, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause a petition, the same being in words and figures as follows, to-wit:

273 UNITED STATES OF AMERICA,
 State of Illinois,
 County of Cook, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Petition of I. Feigel.

[Filed Apr. 14, 1920.]

Now comes I. Feigel and shows to the court that he was one of the petitioning creditors on whose behalf the original petition in bankruptcy was filed herein, that he has read the said petition, that he knows the contents thereof, that in so far as it contains matter of which this petitioner has no personal knowledge, he has been credibly informed and verily believes such statements, and that this petitioner affirms each and every statement therein contained to be true, and this petitioner prays that the original petition stand and that he be authorized to proceed, substituting counsel however in connection therewith. Isadore Feigel.

STATE OF ILLINOIS,
 County of Cook, ss:

I. Feigel being duly sworn on his oath deposes and says the above petition is true. Isadore Feigel.

Subscribed and sworn to before me this 14th day of April, 1920.
J. P. O'Sullivan, Deputy Clerk.

[File endorsement omitted.]

274 And afterwards, to wit, on the 14th day of April, A. D. 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:—

[Title omitted.]

Order of Apr. 14, 1920.

On motion it is ordered by the Court that leave be and hereby is given Jacobsen, Bays & Tompkins to enter their Appearance herein as Solicitors for I. Feigel, vice William Karr Steele, whose appearance is hereby withdrawn; and that leave be and hereby is given said I. Feigel to file herein his affirmance of the original Petition for adjudication filed herein on March 11, 1920.

And afterwards on to-wit the 14th day of April, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause an appearance and withdrawal of appearance, the same being in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Appearance and Substitution.

(Filed Apr. 14, 1920.)

I hereby withdraw my appearance as the Attorney for I. Feigel, and consent that Jacobs, Bays & Tompkins may be substituted in my place. Wm. Karr Steele.

We hereby enter our appearance as the Attorneys for I. Feigel in substitution of William Karr Steele. Jacobs, Bays & Tompkins.

275 I hereby direct that William Karr Steele withdraw as my Attorney, and request that Jacobs, Bays & Tompkins act for me as my Attorney. I. Feigel.

[File endorsement omitted.]

That afterwards, on the same day to-wit, the 14th day of April, 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a notice, same being in words and figures as follows, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Notice.

[Filed Apr. 14, 1920.]

To Mayer, Meyer, Austrian & Platt, 208 S. La Salle St.; Stein, Mayer & David, 1633 First National Bank Bldg.; Rosenthal, Hamill & Wormser, 1400—105 W. Monroe St.; Hayes & Feinberg, 79 W. Monroe Street; Micheal Gesas, 1132—76 W. Monroe Street; Wetten, Matthews & Pegler, 800—108 S. La Salle Street; Jacobson, Bays & Tompkins, 111 W. Washington St.; Wm. Karr Steele, 105 W. Monroe Street; Burry, Johnstone & Peters, 108 S. La Salle Street; Defrees, Buckingham & Eaton, 105 S. La Salle Street; Levinson & Hoffman, 1016—29 S. La Salle Street; Meyerson & Slottow, 111 W. Washington Street; Wilkerson, Cassels & Potter, 1141—The Rookery; Harris, Kagy & Vanier, 850 First National Bank Bldg.:

Please take notice that on Wednesday, the 14th day of April 1920, at 10:30 A. M., or as soon thereafter as counsel can be heard, we shall appear before his Honor Judge K. M. Landis, of said Court, in the Federal Building, Chicago, Illinois, and shall ask the
276 court to set down for hearing for a day certain, that part of the issue presented by the petition of Harold Lachman and the original petition in bankruptcy filed herein, together with the intervening petitions, and the answers and amendments thereto filed by Frank A. Hecht and Joseph M. Finn, and the answers filed by Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, and Peter M. Zuncker to the separate answer of Joseph M. Finn which relates to the liability, if any, of Messrs. Hecht, Finn, Studebakers, Hoffman, Regensteiner, Vette and Zuncker, as partners; at which time and place you may appear if you see fit. Moses, Rosenthal & Kennedy, Attorneys for Harold Lachman.

Received copy of the above notice this 13th day of April, 1920. Stein, Mayer & David. Rosenthal, Hamill & Wormser. Hayes & Feinberg. Michael Gesas. Wetten, Matthews & Pegler. Jacobson, Bays & Tompkins. Wm. Karr Steele. Burry, Johnstone & Peters. Defrees, Buckingham & Eaton. Levinson & Hoffman. Meyerson & Slottow. Wilkerson, Cassels & Potter. Harris, Kagy & Vanier.

STATE OF ILLINOIS,
County of Cook, ss:

Charles Schwartz being first duly sworn on oath deposes and says that he served the within notice on Mayer, Meyer, Austrian & Platt by leaving with O. C. Bruhlman, a clerk in the employ of said Mayer, Meyer, Austrian & Platt, a true copy thereof, this 13th day of April, 1920 at 2:40 P. M. Charles Schwartz.

Subscribed and sworn to before me this 13th day of April, 1920.
Marion S. Carne, Notary Public. (Seal.)

[File endorsement omitted.]

277 And afterwards, on the same day to-wit, on the 14th day of April, A. D. 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of Apr. 14, 1920.

On motion, come the parties, by their solicitors, and the Court being fully advised in the premises, it is ordered that the original petition for adjudication herein, the intervening and amended intervening petitions, and all answers thereto, be and the same hereby are set down for hearing on April 29, 1920, at 10 o'clock A. M.

And afterwards, to wit, on the First day of April, A. D. 1920, there was issued out of and under the seal of said Court, in the above entitled cause, a Subpœna; said Subpœna, together with the return and endorsement of Marshal thereon, is in words and figures as follows, to wit:

Subpœna to Alleged Bankrupt.

[Issued Apr. 1, 1920.]

UNITED STATES OF AMERICA,
Northern District of Illinois:

To Clement Studebaker and George M. Studebaker, in said District,
Greeting:

For Certain Causes offered before the District Court of the United States of America within and for the Northern District of Illinois, as a Court of Bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at the City of Chicago, in said District, on the 6th day of April A. D. 1920, at 10 o'clock in the forenoon, to answer to a petition filed by Joseph M. Finn in our said Court, praying that you may be adjudged

a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in nowise to omit, under the pains and penalties of what may befall thereon.

278 Witness the Honorable Kenesaw M. Landis Judge of said Court, and the seal thereof at Chicago, this 1st day of April, A. D. 1920. John H. R. Jamar, Clerk. [Seal.]

I return this writ unexecuted as I am unable to find the within Clement Studebaker and George M. Studebaker within my District at Chicago, Illinois, this 3rd day of April, A. D. 1920. John J. Bradley, United States Marshal, by O. Paulli, Deputy.

And afterwards, to wit, on the 1st day of April, A. D. 1920, there was issued out of and under the seal of said Court, in the above entitled cause, a Subpœna; said Subpœna, together with the return and endorsement of Marshal thereon, is in words and figures as follows, to wit:

Subpœna to Alleged Bankrupt.

[Issued Apr. 1, 1920.]

UNITED STATES OF AMERICA,
Northern District of Illinois:

To Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, in said District, Greeting:

For Certain Causes offered before the District Court of the United States of America within and for the Northern District of Illinois, as a Court of Bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at the City of Chicago, in said District on the 6th day of April, A. D. 1920, at 10 o'clock in the forenoon, to answer to a petition filed by Joseph M. Finn in our said Court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in nowise to omit, under the pains and penalties of what may befall thereon.

279 Witness the Honorable Kenesaw M. Landis Judge of said Court, and the seal thereof at Chicago, this 1st day of April A. D. 1920. John H. R. Jamar, Clerk. [Seal.]

(Endorsed:) No. 28339. District Court of the United States, Northern District of Illinois, Eastern Division. In Bankruptcy. In the Matter of Ben Marcuse, et al., Alleged Bankrupts. Subpœna to Alleged Bankrupt. Filed Apr. 19, 1920, at — o'clock — M. John H. R. Jamar, Clerk. Mayer, Meyer, Austrian & Platt, Attorney-.

I have served this writ within my District in the following manner, to-wit: Upon the within named Richard Yates Hoffman, Theodore Regenstein, Henry Vette and Peter M. Zuncker by reading and by copy to each of them, all at Chicago, Illinois, this 3rd day of April, A. D. 1920. Clement Studebaker and George M. Studebaker not found. John J. Bradley, United States Marshal, by O. Paulli, Deputy.

4 Services.....	\$8.00
8 Miles .....	.48
	<hr/>
	\$8.48

And afterwards, on to-wit, the 29th day of April, A. D. 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of Apr. 29, 1920.

On motion come the parties by their solicitors, and the Court being fully advised in the premises, it is ordered that leave be, and hereby is, given to I. Feigel, petitioning creditor herein, to file an amended petition to have Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., George M. Studebaker, adjudged bankrupts individually and as copartners trading as Marcuse & Company.

It Is Further Ordered by the Court that upon the filing of said amended petition for adjudication that copies of said amended petition together with writs of subpoena, be served upon said alleged bankrupts, aforesaid, by delivering the same to them and each of them personally, or by leaving the same at the last usual place of abode of each of said alleged bankrupts in said District at least five days before the return day of said subpoenas.

Orders of Apr. 29, 1920 and Apr. 30, 1920.

And afterwards, to wit, on the 30th day of April, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, judge, to-wit:

[Title omitted.]

Come the parties by their solicitors, and upon motion it is Ordered by the Court that the order heretofore entered herein on April 29, A. D. 1920, granting leave to I. Feigel, petitioning creditor herein, to file an amended petition to have Ben Marcuse, et al. adjudged bankrupts individually and trading as Marcuse & Co., be and it is hereby vacated and set aside.

And afterwards, on to-wit, the 30th day of April, A. D. 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

This cause coming on to be heard upon motion of I. Feigel, one of the original petitioning creditors herein, Nathan Jacobs, one of the intervening creditors herein, and W. O. Frazee, by their solicitors, for leave to file herein an amended petition to have Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., George M. Studebaker, adjudged bankrupts, individually and as co-partners, trading as Marcuse & Company. After hearing statements and arguments of Counsel, the Court being fully advised in the premises, it is ordered that leave be and hereby is granted to file said amended petition for adjudication instanter.

And afterwards on to-wit the 30th day of April, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause the amended petition of I. Feigel etc., the same being in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Amended Petition of I. Feigel, One of the Original Petitioning Creditors; Amended Petition of Nathan Jacobs, One of the Intervening Petitioning Creditors, and Intervening Petition of W. O. Frazee, to Have Ben Marcuse et al., Adjudged Bankrupt, Filed Pursuant to Leave of Court First Had and Obtained.

[Filed Apr. 30, 1920.]

To the Honorable Kenesaw M. Landis, Judge of Said Court:

Now Come I. Feigel, Nathan Jacobs and W. O. Frazee, all of the City of Chicago, County of Cook and State of Illinois and respectfully show:

First. That Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, doing business under

the trade name of Marcuse & Company, have for the greater portion of six (6) months next preceding the date of filing this petition had their principal place of business at the City of Chicago in the County of Cook and State and District of Illinois, and were engaged in the business of buying and selling stocks and bonds and other securities, and that they owe debts to the amount of more than \$1,000.00; and that they are amenable to the Act of Congress in relation to bankruptcy.

Second. That your petitioners are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually and as copartners doing business as Marcuse & Company, having provable claims amounting in the aggregate in excess of \$5,000.00; and that the nature and amount of your petitioners' claims are as follows:

The claim of your petitioner I. Feigel is for money due and owing from said alleged bankrupts to said petitioner and after allowing all just credits, deductions and set-offs in favor of said alleged bankrupts as against this petitioner, there is now due and owing from said alleged bankrupts to said petitioner the sum of \$800.00, which said amount is wholly unsecured.

The claim of your petitioner Nathan Jacobs is for money due and owing from said alleged bankrupts to said petitioner and after allowing all just credits, deductions and set-offs in favor of said alleged bankrupts as against this petitioner, there is now due and owing from said alleged bankrupts to said petitioner the sum of \$4,283.95, which said amount is wholly unsecured.

The claim of your petitioner W. O. Frazee is for money due and owing from said alleged bankrupts to said petitioner and after allowing all just credits, deductions and set-offs in favor of said alleged bankrupts as against this petitioner, there is now due and owing from said alleged bankrupts to said petitioner the sum of \$212.18, which said amount is wholly unsecured.

Third. Your petitioners further respectfully represent that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually and as copartners, doing business as Marcuse &

283 Company, are insolvent and that within four (4) months next preceding the date of the filing of the original petition in said cause, the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually and as copartners, doing business as Marcuse & Company, committed an act of bankruptcy in that they did heretofore, on, to wit, the 6th day of March, 1920 transfer while insolvent a large portion of their property, to wit, the sum of \$5,581.70 to B. Lehman, one of their creditors with intent thereby to prefer such creditor over their other creditors and that the effect of such transfer was to enable the said B. Lehman, as such creditor,

to obtain a greater percentage of his debt than any other of the creditors of the said alleged bankrupts of the same class.

Wherefore your petitioner respectfully pray that service of this petition with a subpoena might be made upon Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually and as co-partners, doing business as Marcuse & Company, as provided in the acts of Congress relating to bankruptcy and that said copartnership may be adjudged by the court to be bankrupts within the purview of said acts. I. Feigel. Nathan Jacobs, by L. C. Jorgensen, His Duly Authorized Agent. W. O. Frazee, By Edward J. Rothbart, His Duly Authorized Agent.

STATE OF ILLINOIS,

Cook County, ss:

I. Feigel, being first duly sworn, deposes and states that he has read the above petition by him subscribed; that he knows the contents thereof and that the matters and things therein stated are true, except as to such matters and things therein stated to be upon information and belief and as to such matters so stated to be
284 upon information and belief, this affiant is informed and verily believes and so states that they are true upon such information and belief. I. Feigel.

Subscribed and sworn to before me this 29th day of April, 1920.
Frank R. Leonard, Notary Public. (Seal.)

L. C. Jorgensen, being first duly sworn, deposes and states that he has read the above petition by him subscribed; that he knows the contents thereof and that the matters and things therein stated are true, except as to such matters and things herein stated to be upon information and belief and as to such matters so stated to be upon information and belief, this affiant is informed and verily believes and so states that they are true upon such information and belief. L. C. Jorgensen.

Subscribed and sworn to before me this 29th day of April, 1920.
Frank R. Leonard, Notary Public. (Seal.)

Edward I. Rothbart, being first duly sworn, deposes and states that he has read the above petition by him subscribed; that he knows the contents thereof and that the matters and things therein stated are true, except as to such matters and things therein stated to be upon information and belief, and as to such matters so stated to be upon information and belief, this affiant is informed and verily believes and so states that they are true upon such information and belief. Edward I. Rothbart.

Subscribed and sworn to before me this 29th day of April, 1920.
Frank R. Leonard, Notary Public. (Seal.)

[File endorsement omitted.]

285 And afterwards, on to wit, the 30th day of April, A. D. 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

Order of Apr. 30, 1920.

Upon consideration of the petition of I. Feigel, Nathan Jacobs and W. O. Frazee, filed herein on April 30, 1920, that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., and George M. Studebaker, adjudged bankrupts individually and as co-partners, trading as Marcuse & Company, it is ordered that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., George M. Studebaker, do appear at this Court as a Court of Bankruptcy, to be holden at Chicago in the Northern District of Illinois, on the 5th day of May, 1920, at 10 o'clock in the forenoon, and show cause if any there be, why the prayer of said petition should not be granted, and it is further ordered that a copy of said petition together with a writ of subpœna be served on said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., George M. Studebaker, by delivering the same to each of them personally, or by leaving the same at the last usual place of abode of each of said alleged bankrupts in said District, at least five days before the day aforesaid.

And afterwards, on to wit, the 1st day of May, A. D. 1920, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

286

[Title omitted.]

Order of May 1, 1920.

This matter coming on to be heard upon the petition of I. Feigel, one of the original petitioning creditors herein, and the amended petition of Nathan Jacobs, one of the intervening petitioning creditors herein, and the intervening petition of W. O. Frazee, it is ordered that said cause be, and it hereby is, specially referred to referee in bankruptcy, Frank L. Wean, for the purpose of examining Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Henry Vette, Richard Yates Hoffman, Theodore Regensteiner, Peter M.

Zuncker, Clement Studebaker, Jr., and George M. Studebaker, doing business under the trading name of Marcuse & Company, pursuant to Section 21a of the Bankruptcy Act.

And afterwards, to wit, on the 5th day of May, A. D. 1920, there was filed in the Clerk's Office of said Court in the above entitled cause, an Appearance; same being in the words and figures following, to wit:—

[Title omitted.]

Appearance.

[Filed May 5, 1920.]

We hereby enter the appearance of Bruno Benjamin Marcuse (impleaded as Ben Marcuse) in the matter of the Amended Petition of I. Feigel, one of the original petitioning creditors, the Amended Petition of Nathan Jacobs, one of the intervening petitioning creditors, and the Intervening Petition of W. O. Frazee in the above matter, and our Appearance therein as his Attorneys.

May 5, 1920. Rosenthal, Hamill & Wormser.

[File endorsement omitted.]

287 And afterwards, to wit, on the 30th day of April, A. D. 1920, there was issued out of and under the seal of said Court, in the above entitled cause, a Subpœna; same being in the words and figures following, to wit:

Form No. 5.

Subpœna to Alleged Bankrupt.

[Issued Apr. 30, 1920.]

UNITED STATES OF AMERICA,
Northern District of Illinois:

To Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Peter M. Zuncker, Henry Vette, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner in said District, Greeting:

For Certain Causes offered before the District Court of the United States of America within and for the Northern District of Illinois, as a Court of Bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at the City of Chicago, in said District, on the 5th day of May A. D. 1920, at 10 o'clock in the forenoon, to answer to an amended petition filed by I. Feigel, Nathan Jacobs and W. O. Frazee, on April 30, 1920, in our said Court, praying that you may be adjudged bank-

rupts individually and as copartners trading as Marcuse & Company and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable Kenesaw M. Landis, Judge of said Court, and the seal thereof at Chicago, this 30th day of April A. D. 1920.
— — —, Clerk. (Seal of the Court.)

I have executed this Writ within my District in the following manner to wit: upon the within named Richard Yates Hoffman by reading the same to and within his presence and hearing, and at the same time delivering to him a true copy hereof together with a copy of the amended petition for adjudication.

288 Dated at Chicago, Illinois, this 30th day of April, A. D. 1920. John J. Bradley, United States Marshal. T. C. Smith, Deputy Marshal.

One Service..... 200c.

One Mile..... 6c.

Total 206c.

I return the rest of these Writs unexecuted by order of Gesas, Epstein & Leonard as the within named parties appeared in Court without serving subpoena on them. John J. Bradley, United States Marshal. T. C. Smith, Deputy Marshal.

[File endorsement omitted.]

And afterwards on to wit the 8th day of May, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause the answer of George M. Studebaker to the amended petition of I. Feigel, etc., the same being in words and figures as follows, to wit:

289 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of George M. Studebaker to the Amended Petition of I. Feigel, the Amended Intervening Petition of Nathan Jacobs, and the Intervening Petition of W. O. Frazee in the Above-entitled Cause.

[Filed May 8, 1920.]

Now comes George M. Studebaker, one of the Respondents named in the Amended Petition of I. Feigel; the Amended Intervening Pe-

tion of Nathan Jacobs; and the Intervening Petition of W. O. Frazee, filed in the above entitled cause, (said various petitions being hereinafter referred to collectively as "Petition"), and not submitting himself to the jurisdiction of this Court nor waiving any question of jurisdiction herein and respectfully denying the jurisdiction of this Court as to this Respondent and as to the subject matter as more particularly set forth hereinafter, responds to said Petition and shows why no subpoena may properly issue against this Respondent and why this Respondent may not properly and lawfully be joined as Respondent to any Petition in said matter and why this Respondent may not properly be made party defendant herein or otherwise and says:

1. That he denies that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were doing business under the trade name of Marcuse & Co., or have at any time as such had their principal place of

business at the City of Chicago, in the County of Cook and State and District aforesaid, or as such at any time were engaged in the business of buying and selling stocks and bonds and other securities; or that as such they owe debts to the amount of more than One Thousand Dollars (\$1,000.00) or that as such or otherwise they are amenable to the acts of Congress in relation to bankruptcy, all in manner and form as alleged in said Petition; and this Respondent further denies that said persons were individually and as co-partners doing business as Marcuse & Co. as therein alleged.

This Respondent denies that said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were co-partners as Marcuse & Co. or were doing business under the trade name of Marcuse & Co., or were engaged in the business of buying and selling stocks and bonds or other securities as partners as Marcuse & Co. in manner and form as alleged in said Petition or otherwise.

This Respondent is informed and believes, and therefore avers that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht were engaged in the business of buying and selling stocks and bonds and other securities in the City of Chicago under the trade name of Marcuse & Co. and purporting to be co-partners under the name of Marcuse & Co.; that other than said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, no person or persons whatever were doing said business or purported to do said business under the trade name of Marcuse & Co. or were co-partners, or purported to be co-partners as Marcuse & Co.

This Respondent is informed and believes and therefore avers that the said business so being conducted by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht under the trade name of Marcuse & Co. and as the purported co-partnership of Marcuse & Co. was conducted and was created under and by virtue of a certain agreement in writing, signed and executed by and between said Ben Mar-

cuse, Lew H. Morris, Joseph M. Finn and Frank Hecht and no others, purporting to form among and between them and among and between them alone, a limited co-partnership under the name of Marcuse & Co., that said written articles of co-partnership were so signed and executed by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, on, to wit: the 30th day of June, A. D.

1917, that a true copy of said written agreement is hereto attached, marked "Exhibit A," and hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that neither said Richard Yates Hoffman, Geo. M. Studebaker, Clement Studebaker, Jr., Theodore Regensteiner, Peter M. Zuncker or Henry Vette signed said agreement (Exhibit "A"), nor was any of them, a party to said "Exhibit A" partnership contract.

This Respondent is informed and believes and therefore avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain Trust Agreement to and with Chicago Title and Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title and Trust Company.

This Respondent avers that a true copy of the agreement last mentioned (hereinafter for brevity called Trust Agreement) is hereto attached, marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent is informed and believes and therefore avers that upon the execution of said Trust Agreement Richard Yates Hoffman paid to said Hecht and said Finn as Trustees under and by virtue of said Trust Agreement, and in order to acquire a trust certificate thereunder, and for no other purpose whatsoever, the sum of \$50,000.

This Respondent avers that neither Clement Studebaker, Jr., nor George M. Studebaker ever at any time contributed or paid any sum of money to said Hecht and Finn, or either of them, or made any agreement of any kind with them, or either of them.

This Respondent is informed and believes and therefore avers that on June 30, 1917, Studebaker Bros. Trust made its check for \$50,000 payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately and on the same day endorsed said check and made it thereby payable to the order of said Hecht and Finn, as Trustees, and then delivered the same to them under and by virtue of said Trust Agreement and not otherwise.

This Respondent is informed and believes and therefore avers that thereupon said Chicago Title and Trust Company, under and by virtue of said Trust Agreement and not otherwise, and in consideration of the payment of said \$50,000 issued its certificate in the name of said Richard Yates Hoffman bearing date of June 30, 1917, for one hundred shares in the Hecht-Finn Trust created by such Trust Agreement; that said certificate was delivered by said Chicago Title and Trust Company to said Richard Yates Hoff-

man on, to wit: the 2nd day of July, 1917, and that he thereupon assigned the same and delivered it to said Studebaker Bros. Trust which was at all times owner of said certificate as a part of its assets and part of its funds; that, except as above stated, Richard Yates Hoffman had no connection with or relation to said subject matter.

This Respondent avers that a true copy of such certificate is hereto attached, marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if set forth in full herein.

This Respondent avers that said Studebaker Bros. Trust then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title and Trust Company and which was being administered by said Chicago Title and Trust Company as a fund under a certain Trust Deed (hereinafter referred to as Trust Deed) made and executed March 1, 1916, for the benefit of various persons, including said George M. Studebaker and Clement Studebaker, Jr., and in nowise related to the subject matter of this controversy; that said \$50,000 so paid for said certificate was a portion of the money and funds held by Chicago Title and Trust Company under said Trust Deed; and that said certificate so purchased with said \$50,000 was and became a part and portion of the property so held thereunder.

This Respondent is informed and believes and therefore avers that said certificate in the name of said Richard Yates Hoffman was issued under said Trust Agreement, as aforesaid, and was delivered to and accepted by said Richard Yates Hoffman, as aforesaid, and accepted by and paid for by said Studebaker Bros. Trust, as aforesaid, in sole reliance upon the terms of said Trust Agreement.

This Respondent is informed and believes and so avers that said Richard Yates Hoffman, in paying said money, and accepting therefor said certificate, had no intention whatever of becoming a partner of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., and George M. Studebaker, or of any one or more of them, under the name of Marcuse & Co. or otherwise, but, on the contrary, intended not to become a partner with any person whomsoever, as Marcuse & Co. or otherwise, and in good faith believed that he was not becoming, and did not become, a co-partner of Mar-

293 cuse & Co. or one of the members of said co-partnership of Marcuse & Co. or of any co-partnership whatsoever.

This Respondent further avers that he never at any time saw said Hecht or said Finn, or had any meeting or agreement with them or either of them, or solicited them or either of them to become a partner of Marcuse & Co. or made or entered into any agreement whatever with said Hecht and Finn; that the sole relation of this Respondent to the subject matter of said Trust Agreement was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of \$50,000. in money, with which money said certificate was purchased as an investment for and on behalf of said Studebaker Bros. Trust and as a part of its property.

This Respondent avers that at the time of the occurrence of the various transactions above mentioned this Respondent had no par-

ticipation in, or knowledge and information concerning, the same; that he never saw said written contract, "Exhibit A," or said Trust Agreement, "Exhibit B," or said trust certificate, "Exhibit C," or the said check of said Studebaker Bros. Trust for \$50,000. until within a few weeks before this Answer was filed; that prior to March 11, 1920 his sole knowledge relating to said transactions was that said Studebaker Bros. Trust had purchased as an investment and carried and reported among its assets said certificate.

2. This Respondent denies that the Petitioners in said Petition are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, either individually or as co-partners doing business as Marcuse & Co.; and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them are partners of Marcuse & Co. or are doing or did business as partners of Marcuse & Co. and therefore denies that said Petitioners have any provable claims against any or either of the said last mentioned persons in manner and form as alleged in said Petition.

3. This Respondent denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged partners are insolvent.

This Respondent denies that Clement Studebaker, Jr.,
294 George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them, are or have been partners doing business as Marcuse & Co. and denies that said firm of Marcuse & Co., or the co-partnership of Marcuse & Co., aforesaid, consists in whole or in part of said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker or any of them.

4. This Respondent denies that within four months next preceding the date of the filing of Petition herein, or at any time whatsoever, the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged co-partners doing business as Marcuse & Co., committed an act of bankruptcy in manner and form as alleged in said Petition, and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker are or have been co-partners, or are or have been doing, or did business, as Marcuse & Co.

5. This Respondent further denies that he has committed any act of bankruptcy or that he is insolvent in manner and form as alleged in said petition or otherwise.

6. This Respondent does not submit himself to the jurisdiction of this Court, nor has he at any time submitted himself to such

jurisdiction, for the purpose of being adjudged a bankrupt or for the purpose of having his solvency or insolvency passed upon or for the purpose of having his alleged partnership determined, or otherwise, and he respectfully reserves the right to object to the jurisdiction of this Court to determine the questions of his alleged bankruptcy, solvency and partnership; and now maintaining and not waiving any of its rights as above set forth and otherwise, this Respondent denies that he is a partner as in Petition alleged, denies that he, individually or as alleged partner, has committed any act of bankruptcy whatsoever, denies that he is insolvent, individually or as alleged partner, and avers that he should not be declared a bankrupt for any cause whatsoever. George M. Studebaker.

295 STATE OF INDIANA,
 County of St. Joseph, ss:

George M. Studebaker, being first duly sworn, on oath deposes and says that he is the Respondent named in the foregoing Answer by him subscribed; that he has read said Answer and knows the contents thereof; that he knows the matters and things in said Answer set forth to be true, except such matters and things as are therein stated to be on information and belief, which he verily believes to be true. George M. Studebaker.

Subscribed and sworn to before me, a Notary Public, duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid, this 7th day of May, A. D. 1920.

Witness my official seal. Frances M. Thurman, Notary Public as Aforesaid. (Notarial Seal.) My commission expires October 23, 1920.

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy:)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

296

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards on to-wit the 8th day of May, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause the answer of Clement Studebaker, Jr., to the amended petition of I. Feigel, etc., the same being in words and figures as follows, to-wit:

297 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Clement Studebaker, Jr., to the Amended Petition of I. Feigel, the Amended Intervening Petition of Nathan Jacobs, and the Intervening Petition of W. O. Frazee, in the Above-entitled Cause.

[Filed May 8, 1920.]

Now Comes Clement Studebaker, Jr., one of the Respondents named in the Amended Petition of I. Feigel, the Amended Intervening Petition of Nathan Jacobs and the Intervening Petition of W. O. Frazee, filed in the above entitled cause, (said various Petitions being hereinafter referred to collectively as "Petition") and not submitting himself to the jurisdiction of this Court nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this Court as to this Respondent and as to the subject matter, as more particularly set forth hereinafter, responds to said Petition and shows why no subpoena may properly issue against this Respondent, and why this Respondent may not properly and lawfully be joined as Respondent to any Petition in said matter, and why this Respondent may not properly be made party defendant herein or otherwise and says:

1. That he denies that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker,

Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were doing business under the trade name of Marcuse & Co., or have at any time as such had their principal place of business at the City of Chicago, in the County of Cook and State

and District aforesaid, or as such at any time were engaged in
298 the business of buying and selling stocks and bonds and other securities, or that as such they owe debts to the amount of more than \$1,000.00, or that as such or otherwise they are amenable to the acts of Congress in relation to bankruptcy, all in manner and form as alleged in said Petition; and this Respondent denies that said persons were individually and as co-partners doing business as Marcuse & Co. as therein alleged.

This Respondent denies that said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were co-partners as Marcuse & Co. or were doing business under the trade name of Marcuse & Co. or were engaged in the business of buying and selling stocks and bonds or other securities as partners as Marcuse & Co. in manner and form as alleged in said Petition, or otherwise.

This Respondent is informed and believes, and therefore avers that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht were engaged in the business of buying and selling stocks and bonds and other securities in the City of Chicago, under the trade name of Marcuse & Co., and purporting to be co-partners under the name of Marcuse & Co.; that other than said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht no person or persons whatever, were doing said business, or purported to do said business, under the trade name of Marcuse & Co. or were co-partners, or purported to be co-partners as Marcuse & Co.

This Respondent is informed and believes and therefore avers that said business so being conducted by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht under the trade name of Marcuse & Co. and as the purported co-partnership of Marcuse & Co., was conducted and was created under and by virtue of a certain agreement in writing, signed and executed by and between said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht and no others, purporting to form among and between them, and among and between them alone, a limited co-partnership under the name of Marcuse & Co.; that said written articles of co-partnership were so signed and executed by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht on, to wit: the 30th day of June, A. D. 1917; that a true copy of said written agreement is hereto attached,
marked "Exhibit A," and hereby referred to and made a
299 part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that neither said Richard Yates Hoffman, George M. Studebaker, Clement Studebaker, Jr., Theodore Regensteiner, Peter M. Zuncker or Henry Vette signed said agreement (Exhibit A), nor was any of them a party to said "Exhibit A" partnership contract.

This Respondent is informed and believes and therefore avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain Trust Agreement to and with Chicago Title and Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title and Trust Company.

This Respondent avers that a true copy of the agreement last mentioned (hereinafter for brevity called Trust Agreement) is hereto attached, marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent is informed and believes and therefore avers that upon the execution of said Trust Agreement Richard Yates Hoffman paid to said Hecht and said Finn, as Trustees, under and by virtue of said Trust Agreement, and in order to acquire a trust certificate thereunder and for no other purpose whatsoever, the sum of \$50,000.

This Respondent avers that neither Clement Studebaker, Jr., nor George M. Studebaker ever at any time contributed or paid any sum of money to said Hecht and Finn, or either of them, or made any agreement of any kind with them, or either of them.

This Respondent is informed and believes and therefore avers that on June 30, 1917, Studebaker Bros. Trust made its check for \$50,000 payable to the order of Richard Yates Hoffman and delivered the same to him; that said Richard Yates Hoffman immediately and on the same day endorsed said check and made it thereby payable to the order of said Hecht and Finn, as Trustees, and then delivered the same to them under and by virtue of said Trust Agreement and not otherwise.

This Respondent is informed and believes and therefore avers that thereupon said Chicago Title and Trust Company, under and by virtue of said Trust Agreement and not otherwise, and in consideration of the payment of said \$50,000, issued its certificate in the name of said Richard Yates Hoffman bearing date of June 30, 1917, for 100 shares in the Hecht-Finn Trust created by 300 such Trust Agreement; that said certificate was delivered by said Chicago Title and Trust Company to said Richard Yates Hoffman on, to wit: the 2nd day of July, 1917, and that he thereupon assigned the same and delivered it to said Studebaker Bros. Trust which was at all times owner of said certificate as a part of its assets and part of its funds; that, except as above stated, Richard Yates Hoffman had no connection with or relation to said subject matter.

This Respondent avers that a true copy of such certificate is hereto attached, marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that said Studebaker Bros. Trust then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title and Trust Company and which was being administered by said Chicago Title and Trust Com-

pany as a fund under a certain Trust Deed (hereinafter referred to as Trust Deed) made and executed March 1, 1916, for the benefit of various persons, including said George M. Studebaker and Clement Studebaker, Jr., and in nowise related to the subject matter of this controversy; that said \$50,000 so paid for said certificate was a portion of the money and funds held by Chicago Title and Trust Company under said Trust Deed; and that said certificate so purchased with said \$50,000 was and became a part and portion of the property so held thereunder.

This Respondent is informed and believes and therefore avers that said certificate in the name of said Richard Yates Hoffman was issued under said Trust Agreement, as aforesaid, and was delivered to and accepted by said Richard Yates Hoffman, as aforesaid, and accepted by and paid for by said Studebaker Bros. Trust, as aforesaid, in sole reliance upon the terms of said Trust Agreement.

This Respondent is informed and believes and so avers that said Richard Yates Hoffman, in paying said money, and accepting therefor said certificate, had no intention whatever of becoming a partner of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., and George M. Studebaker, or of any one or more of them, under the name of Marcuse & Co. or otherwise, but, on the contrary, intended not to become a partner with any person
301 whomsoever, as Marcuse & Co. or otherwise, and in good faith believed that he was not becoming, and did not become, a co-partner of Marcuse & Co. or one of the members of said co-partnership of Marcuse & Co. or of any co-partnership whatsoever.

This Respondent further avers that he never at any time saw said Hecht or said Finn, or had any meeting or agreement with them or either of them, or solicited them or either of them to become a partner of Marcuse & Co., or made or entered into any agreement whatever with said Hecht and Finn; that the sole relation of this Respondent to the subject matter of said Trust Agreement was that said Studebaker Bros. Trust furnished to said Richard Yates Hoffman the said sum of \$50,000 in money, with which money said certificate was purchased as an investment for and on behalf of said Studebaker Bros. Trust and as a part of its property.

This Respondent avers that at the time of the occurrence of the various transactions above mentioned this Respondent had no participation in, or knowledge and information concerning, the same; that he never saw said written contract, "Exhibit A," or said Trust Agreement, "Exhibit B," or said trust certificate, "Exhibit C," or the said check of said Studebaker Bros. Trust for \$50,000 until within a few weeks before this answer was filed; that prior to March 11, 1920, his sole knowledge relating to said transactions was that said Studebaker Bros. Trust had purchased as an investment, and carried and reported among its assets said certificate.

2. This Respondent denies that the Petitioners in said Petition are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M.

Zuncker, either individually or as co-partners doing business as Marcuse & Co.; and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them, are partners of Marcuse & Co. or are doing or did business as partners of Marcuse & Co. and therefore denies that said Petitioners have any provable claims against any or either of the said last mentioned persons in manner and form as alleged in said Petition.

3. This Respondent denies that said Clement Studebaker, 302 Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged partners are insolvent.

This Respondent denies that Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them, are or have been partners doing business as Marcuse & Co. and denies that said firm of Marcuse & Co., or the co-partnership of Marcuse & Co. aforesaid, consists in whole or in part of said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them.

4. This Respondent denies that within four months next preceding the date of the filing of Petition herein or at any time whatsoever, the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged co-partners doing business as Marcuse & Co., committed an act of bankruptcy in manner and form as alleged in said Petition; and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker are or have been copartners, or are doing or did business as Marcuse & Co.

5. This Respondent further denies that he has committed any act of bankruptcy or that he is insolvent in manner and form as alleged in said Petition or otherwise.

6. This Respondent does not submit himself to the jurisdiction of this Court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt or for the purpose of having his solvency or insolvency passed upon or for the purpose of having his alleged partnership determined or otherwise, and he respectfully reserves the right to object to the jurisdiction of this Court to determine the questions of his alleged bankruptcy, solvency and partnership; and now, maintaining and not waiving any of his rights as above set forth and otherwise, this Respondent denies that he is a partner as in Petition alleged, denies that he, individually or as alleged partner, has committed any act of bankruptcy whatsoever, denies that he is insolvent, individually or as alleged partner, and avers that he should not be declared a bankrupt for any cause whatsoever. Clement Studebaker, Jr.

303 **STATE OF INDIANA,**
 County of St. Joseph, ss:

Clement Studebaker, Jr., being first duly sworn, on oath deposes and says that he is the Respondent named in the foregoing Answer by him subscribed; that he has read said Answer and knows the contents thereof; that he knows the matters and things in said Answer set forth to be true, except such matters and things as are therein stated to be on information and belief, which he verily believes to be true. Clement Studebaker, Jr.

Subscribed and sworn to before me, a Notary Public duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid, this 7th day of May, A. D. 1920.

Witness my official seal. Frances M. Thurman, Notary Public as aforesaid. (Notarial Seal.) My commission expires October 23, 1920.

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

304

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

[File endorsement omitted.]

That afterwards on the same day, to-wit: on the 8th day of May, A. D. 1920, there was filed in the Office of the Clerk of said Court the answer of Henry Vette to the amended petition of I. Feigel, et al., same being in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

[Title omitted.]

**The Separate Answer of Henry Vette to the Amended Petition
of I. Feigel, the Amended Intervening Petition of Nathan
Jacobs, and the Intervening Petition of W. O. Frazee, in the
Above-entitled Cause.**

[Filed May 8, 1920.]

Now comes Henry Vette, one of the respondents named in the
amended petition of I. Feigel, the amended intervening peti-
305 tion of Nathan Jacobs and the intervening petition of W. O.
Frazee, filed in the above entitled cause, (said various petitions
hereinafter referred to collectively as the petition) and not submit-
ting himself to the jurisdiction of this Court nor waiving any ques-
tion of jurisdiction herein, and respectfully denying the jurisdiction
of this Court as to this respondent and as to the subject matter, as
more particularly set forth hereinafter, responds to said petition and
shows why no subpoena may properly issue against this respondent
and why this respondent may not properly and lawfully be joined
as respondent to any petition in said matter and why this respondent
may not properly be made party defendant herein or otherwise and
says:

1. This respondent denies that Ben Marcuse, Lew H. Morris,
Joseph M. Finn, Frank A. Hecht (referred to in said petition as
Frank Hecht), Clement Studebaker, Jr., George M. Studebaker,
Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker
and this respondent, Henry Vette, were doing business under the
trade name of Marcuse & Co., or have at any time as such had their
principal place of business at the City of Chicago, in the County of
Cook, and State and District aforesaid, or as such at any time were
engaged in the business of buying and selling stocks, bonds and
other securities, or that as such they owe debts to the amount of
more than \$1,000.00, or that as such or otherwise they are amenable
to the acts of Congress in relation to bankruptcy, all in manner and
form as alleged in said petition and this respondent denies that said
persons were individually and as co-partners doing business as Mar-
cuse & Co., as therein alleged.

This respondent denies that said Ben Marcuse, Lew H. Morris,
Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George
M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner,
Peter M. Zuncker and this respondent, Henry Vette, were copartners
as Marcuse & Co., or were doing business under the trade name of

Marcuse & Co., or were engaged in the business of buying and selling stocks, bonds or other securities as partners as Marcuse & Co., in manner and form as alleged in said petition or otherwise.

This respondent avers that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht were engaged in the business of buying and selling stocks, bonds and other securities in the City of Chicago under the trade name of Marcuse & Co. and pur-

306 porting to be copartners under the name of Marcuse & Co.; that other than said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, no person or persons whatsoever were doing said business or purported to do said business under the trade name of Marcuse & Co. or were copartners or purported to be copartners as Marcuse & Co.

This respondent avers that said business so being conducted by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht under the trade name of Marcuse & Co. and as the purported copartnership of Marcuse & Co. was conducted and was created under and by virtue of a certain agreement in writing signed and executed by and between said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht and no others, purporting to form among and between them, and among and between them alone, a limited copartnership under the name of Marcuse & Co.; that said written articles of copartnership were so signed and executed by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht on to-wit, the 30th day of June, A. D. 1917; that a true copy of said written agreement is hereto attached marked Exhibit A and hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This respondent avers that neither said Richard Yates Hoffman, George M. Studebaker, Clement Studebaker, Jr., Theodore Regensteiner, Peter M. Zuncker or this respondent, Henry Vette, signed said agreement (Exhibit A) nor was any of them a party to said "Exhibit A" partnership contract.

This respondent avers that on and under date of June 30th, 1917, said Joseph M. Finn and Frank A. Hecht made and executed a certain trust agreement to and with Chicago Title & Trust Company, an Illinois corporation and thereupon delivered the same to said Chicago Title & Trust Company.

This respondent avers that a true copy of the agreement last mentioned (hereinafter for brevity called trust agreement) is hereto attached marked "Exhibit B," and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This respondent avers that upon the execution of said trust agreement, this respondent acting through his attorney, paid to said Frank A. Hecht and Joseph M. Finn, under and by virtue of said trust agreement and in order to acquire a trust certificate thereunder

307 and for no other purpose whatsoever, the sum of \$30,000.00. This respondent avers further that thereupon said Chicago Title & Trust Company, under and by virtue of said trust agreement and not otherwise and in consideration of the payment of said \$30,000.00, issued its certificate in the name of this

respondent, bearing date June 30th, 1917 for sixty (60) shares in the Hecht-Finn Trust, created by said trust agreement; that said certificate was delivered by said Chicago Title & Trust Company to this respondent's attorney for this respondent and thereafter by said attorney delivered to this respondent, a true copy of which certificate is hereto attached marked Exhibit C and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This respondent avers further that said certificate was issued under said trust agreement as aforesaid and was delivered to this respondent in manner as aforesaid, and accepted by this respondent in sole reliance upon the terms of said trust agreement.

This respondent avers further that in paying said money and accepting therefor said certificate, this respondent had no intention whatever of becoming a partner of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Theodore Regensteiner, Clement Studebaker, Jr., George M. Studebaker, Peter M. Zuncker, or of any one or more of them, under the firm name of Marcuse & Co. or otherwise, but on the contrary intended not to become a partner with any person whomsoever as Marcuse & Co. or otherwise, and in good faith believed he was not becoming and did not become a copartner of Marcuse & Co. or one of the members of said copartnership of Marcuse & Co. or of any copartnership whatsoever.

This respondent further avers that he never at any time solicited Frank A. Hecht and Joseph M. Finn, or either of them, to become a partner of Marcuse & Co.; that the sole relation of this respondent to the subject matter of said trust agreement was as hereinabove set forth.

2. This respondent denies that the petitioners in said petition are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent, either individually or as co-partners doing business as Marcuse & Co.; and denies that said Clement Studebaker,

Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent, or any of them, are partners of Marcuse & Co. or are doing or did business as partners of Marcuse & Co. and therefore denies that said petitioners have any proveable claims against any or either of the said last mentioned persons including this respondent in manner and form as alleged in said petition.

3. This respondent denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent, individually or as alleged partners, are insolvent.

This respondent denies that Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent, or any of them, are or have been partners doing business as Marcuse & Co., and denies that said firm of Marcuse & Co. or the copartnership of Marcuse & Co. aforesaid, consists in whole or in part of said Clement Studebaker, Jr., George

M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent, or any of them.

4. This respondent denies that within four (4) months next preceding the date of the filing of petition herein or at any time whatsoever the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent, individually or as alleged copartners doing business as Marcuse & Co., committed an act of bankruptcy in manner and form as alleged in said petition, and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Peter M. Zuncker and this respondent are or have been partners or are doing or did business as Marcuse & Co.

5. This respondent further denies that he has committed any act of bankruptcy or that he is insolvent in manner and form as alleged in said petition or otherwise.

6. This respondent does not submit himself to the jurisdiction of this Court nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt, or for the purpose of having his solvency or insolvency passed upon or for the purpose of having his alleged partnership determined or otherwise, and he respectfully reserves the right to object to the jurisdiction of this Court to determine the questions of his alleged bankruptcy, solvency and partnership; and now maintaining and
309 not waiving any of his rights as above set forth and otherwise, this respondent denies that he is a partner as in the petition alleged, denies that he individually or as alleged partner has committed any act of bankruptcy whatsoever, denies that he is insolvent individually or as alleged partner and avers that he should not be declared bankrupt for any cause whatsoever. Henry Vette. Busby, Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Henry Vette, being first duly sworn on oath, deposes and says that he is the respondent named in the foregoing answer by him subscribed; that he has read said answer and knows the contents thereof; that he knows the matter and things in said answer set forth to be true except such matters and things as are therein stated to be on information and belief and as to such matters he verily believes them to be true. Henry Vette.

Subscribed and sworn to before me, a notary public, this 7th day of May, A. D. 1920. Arthur A. Anderson, Notary Public.

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

310

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Peter M. Zuncher of which Exhibit "C" to the Response of Peter M. Zuncher to the amendment of Joseph M. Finn to the Petition of Fred Mayer, et al., is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards on to-wit the 8th day of May, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause the answer of Richard Yates Hoffman to the amended petition of I. Feigel etc., the same being in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Richard Yates Hoffman to the Amended Petition of I. Feigel, the Amended Intervening Petition of Nathan Jacobs, and the Intervening Petition of W. O. Frazee in the Above-entitled Cause.

[Filed May 8, 1920.]

Now comes Richard Yates Hoffman, one of the Respondents named in the Amended Petition of I. Feigel; the Amended Intervening Petition of Nathan Jacobs; and the Intervening Petition of W. O. Frazee, filed in the above entitled cause, (said various petitions being hereinafter referred to collectively as "Petition"), and not submitting himself to the jurisdiction of this Court or waiving any question of jurisdiction herein and respectfully denying the jurisdiction of this Court as to this Respondent and as to the subject matter as more particularly set forth hereinafter, responds to said Petition and shows why no subpoena may prop-

311

erly issue against this Respondent and why this Respondent may not properly and lawfully be joined as Respondent to any Petition in said matter and why this Respondent may not properly be made party defendant herein or otherwise and says:

1. This Respondent denies that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were doing business under the trade name of Marcuse & Co., or have at any time as such had their principal place of business at the City of Chicago, in the County of Cook and State and District aforesaid, or as such at any time were engaged in the business of buying and selling stocks and bonds and other securities; or that as such they owe debts to the amount of more than One Thousand Dollars (\$1,000.00) or that as such or otherwise they are amenable to the acts of Congress in relation to bankruptcy, all in manner and form as alleged in said petition; and this Respondent further denies that said persons were individually and as co-partners doing business as Marcuse & Co. as therein alleged.

This Respondent denies that said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were co-partners as Marcuse & Co. or were doing business under the trade name of Marcuse & Co., or were engaged in the business of buying and selling stocks and bonds or other securities as partners as Marcuse & Co. in manner and form as alleged in said Petition or otherwise.

This Respondent avers that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht were engaged in the business of buying and selling stocks and bonds and other securities in the City of Chicago under the trade name of Marcuse & Co. and purporting to be co-partners under the name of Marcuse & Co., that other
312 than said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, no person or persons whatever, so far as this Respondent is informed and as he believes and therefore states the fact to be, were doing said business or purported to do said business under the trade name of Marcuse & Co. or were co-partners, or purported to be co-partners as Marcuse & Co.

This Respondent avers that the said business so being conducted by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht under the trade name of Marcuse & Co. and as the purported co-partnership of Marcuse & Co. was conducted and was created under and by virtue of a certain agreement in writing, signed and executed by and between said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht and no others, purporting to form among and between them and among and between them alone, a limited co-partnership under the name of Marcuse & Co., that said written articles of co-partnership were so signed and executed by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, on or about the 30th day of June, A. D. 1917.

This Respondent avers that a true copy of said written agreement is hereto attached, marked "Exhibit A," and is hereby referred to

and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that neither he nor said Geo. M. Studebaker, Clement Studebaker, Jr., Theodore Regensteiner, Peter M. Zunker or Henry Vette signed and said agreement (Exhibit "A"), nor was any of them, a party to said "Exhibit A" partnership contract.

This Respondent avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain Trust Agreement to and with Chicago Title and Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title and Trust Company.

This Respondent avers that a true copy of the agreement last mentioned (hereinafter for brevity called Trust Agreement) is hereto attached, marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that upon the execution of said Trust Agreement, this Respondent paid to said Hecht and said Finn as Trustees under and by virtue of said Trust Agreement, and in order to acquire a trust certificate thereunder, and for no other purpose whatsoever, the sum of \$50,000.

313 This Respondent avers that on June 30, 1917, Studebaker Bros. Trust made its check for \$50,000 payable to the order of this Respondent and delivered the same to him; that this Respondent immediately and on the same day endorsed said check and made it thereby payable to the order of said Hecht and Finn, as Trustees, and then delivered the same to them under and by virtue of said Trust Agreement and not otherwise.

This Respondent avers that thereupon said Chicago Title and Trust Company, under and by virtue of said Trust Agreement and not otherwise, and in consideration of the payment of said \$50,000 issued its certificate bearing date of June 30, 1917, in the name of this Respondent, for one hundred shares in the Hecht-Finn Trust created by such Trust Agreement; that said certificate was delivered by said Chicago Title and Trust Company to this Respondent on the 2nd day of July, 1917, and that he thereupon assigned the same and delivered it to said Studebaker Bros. Trust which was at all times owner of said certificates as a part of its assets and part of its funds; that, except as above stated, this Respondent had no connection with or relation to said subject matter.

This Respondent avers that a true copy of such certificate is hereto attached, marked "Exhibit C" and is hereby referred to and made a part hereof as fully and to the same effect as it set forth in full herein.

This Respondent avers that he is informed and believes and therefore states the fact to be that said Studebaker Bros. Trust then consisted of certain property constituting a fund, the legal and equitable title to which was vested in Chicago Title and Trust Company and which was being administered by said Chicago Title and Trust Com-

pany as a fund under a certain Trust Deed (hereinafter referred to as Trust Deed) made and executed March 1, 1916, for the benefit of various persons, including said George M. Studebaker and Clement Studebaker, Jr. and in nowise related to the subject matter of this controversy; that said \$50,000 so paid for said certificate was a portion of the money and funds held by Chicago Title and Trust Company under said Trust Deed; and that said certificate so purchased with said \$50,000 was and became a part and portion of the property so held thereunder.

This Respondent avers that said certificate in the name of this Respondent was issued under said Trust Agreement, as aforesaid, and was accepted by this Respondent as aforesaid, and
314 accepted by and paid for by said Studebaker Bros. Trust, as aforesaid, in sole reliance upon the terms of said Trust Agreement.

This Respondent avers that this Respondent, in paying said money, and accepting therefor said certificate, had no intention whatever of becoming a partner of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., and George M. Studebaker, or of any one or more of them, under the name of Marcuse & Co. or otherwise, but, on the contrary, intended not to become a partner with any person whomsoever, as Marcuse & Co. or otherwise, and in good faith believed that he was not becoming, and did not become, a co-partner of Marcuse & Co. or one of the members of said co-partnership of Marcuse & Co. or of any co-partnership whatsoever.

This Respondent further avers that he never at any time solicited Frank Hecht and Joseph M. Finn or either of them to become a partner of Marcuse & Co.

2. This Respondent denies that the Petitioners in said Petition are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, either individually or as co-partners doing business as Marcuse & Co.) and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them are partners of Marcuse & Co. or are doing or did business as partners of Marcuse & Co. and therefore denies that said Petitioners have any provable claims against any or either of the said last mentioned persons in manner and form as alleged in said Petition.

3. This Respondent denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged partners, are insolvent.

This Respondent denies that Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them, are or have been partners doing business as Marcuse & Co., and denies that said firm of

315 Marcuse & Co., or the co-partnership of Marcuse & Co. aforesaid, consists in whole or in part of said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theo-

dore Regensteiner, Henry Vette and Peter M. Zuncker or any of them.

4. This Respondent denies that within four months next preceding the date of the filing of Petition herein, or at any time whatsoever, the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged co-partners doing business as Marcuse & Co., committed an act of bankruptcy in manner and form as alleged in said Petition, and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker are or have been co-partners, or are doing, or did business, as Marcuse & Co.

5. This Respondent further denies that he has committed any act of bankruptcy or that he is insolvent in manner and form as alleged in said petition or otherwise.

6. This Respondent does not submit himself to the jurisdiction of this Court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt or for the purpose of having his solvency or insolvency passed upon or for the purpose of having his alleged partnership determined, or otherwise, and he respectfully reserves the right to object to the jurisdiction of this Court to determine the questions of his alleged bankruptcy, solvency and partnership; and now, maintaining and not waiving any of his rights as above set forth and otherwise, this Respondent denies that he is a partner as in Petition alleged, denies that he, individually or as alleged partner, has committed any act of bankruptcy whatsoever, denies that he is insolvent, individually or as alleged partner, and avers that he should not be declared a bankrupt for any cause whatsoever. (Signed) Richard Yates Hoffman.

STATE OF ILLINOIS,

County of Cook, ss:

Richard Yates Hoffman, being first duly sworn, on oath deposes and says that he is the Respondent named in the foregoing Answer by him subscribed; that he has read said Answer and knows
316 the contents thereof; that he knows the matters and things in said Answer set forth to be true, except such matters and things as are therein stated to be on information and belief, which he verily believes to be true. (Signed) Richard Yates Hoffman.

Subscribed and sworn to before me, a Notary Public, duly commissioned and authorized to take oaths in and for and under the laws of the county and state aforesaid, this 7th day of May, A. D. 1920.

Witness my official seal. (Signed) Vincent O'Brien, Notary Public as Aforesaid. (Notarial Seal.) My commission expires Feb. 13, 1924.

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Rich'd Yates Hoffman of which Exhibit "C" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

317 [File endorsement omitted.]

And afterwards on to wit the 8th day of May, A. D. 1920, there was filed in the office of the Clerk of said Court in the above entitled cause the Answer of Theodore Regensteiner to amended petition of I. Feigel etc., the same being in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Eastern Division,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Theodore Regensteiner to the Amended Petition of I. Feigel, the Amended Intervening Petition of Nathan Jacobs, and the Intervening Petition of W. O. Frazee in the Above-entitled Cause.

[Filed May 8, 1920.]

Now comes Theodore Regensteiner, one of the Respondents named in the Amended Petition of I. Feigel; the Amended Intervening Petition of Nathan Jacobs; and the Intervening Petition of W. O.

Fraze, filed in the above entitled cause (said various petitions being hereinafter referred to collectively as "Petition"), and not submitting himself to the jurisdiction of this Court nor waiving any question of jurisdiction herein and respectfully denying the jurisdiction of this Court as to this Respondent and as to the subject matter as more particularly set forth hereinafter, responds to said
318 Petition and shows why no subpoena may properly issue against this Respondent and why this Respondent may not properly and lawfully be joined as Respondent to any Petition in said matter and why this Respondent may not properly be made party defendant herein or otherwise, and says:

1. That he denies that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were doing business under the trade name of Marcuse & Co., or have at any time as such had their principal place of business at the City of Chicago, in the County of Cook and State and District aforesaid, or as such at any time were engaged in the business of buying and selling stocks and bonds and other securities; or that as such they owe debts to the amount of more than One Thousand Dollars (\$1,000) or that as such or otherwise they are amenable to the acts of Congress in relation to bankruptcy, all in manner and form as alleged in said Petition; and this Respondent further denies that said persons were individually and as co-partners doing business as Marcuse & Co., as therein alleged.

This Respondent denies that said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker were co-partners as Marcuse & Co. or were doing business under the trade name of Marcuse & Co., or were engaged in the business of buying and selling stocks and bonds or other securities as partners as Marcuse & Co. in manner and form as alleged in said Petition or otherwise.

This Respondent avers and charges the fact to be that said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht were engaged in the business of buying and selling stocks and bonds and other securities in the City of Chicago under the trade name of Marcuse & Co. and purporting to be co-partners under the name of Marcuse & Co.; that other than said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht, no person or persons whatever were doing said business or purported to do said business under the trade name of Marcuse & Co. or were co-partners, or purported to be co-partners as Marcuse & Co.

This Respondent further avers that the said business so being conducted by said Ben Marcuse, Lew H. Morris, Joseph M. Finn, and Frank Hecht under the trade name of Marcuse & Co. and as
319 the purported co-partnership of Marcuse & Co. was conducted and was created under and by virtue of a certain agreement in writing, signed and executed by and between said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank Hecht and no others, purport-

ing to form among and between them and among and between them alone, a limited copartnership under the name of Marcuse & Co., that said written articles of copartnership were so signed and executed by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht on, to wit: the 30th day of June, A. D. 1917, that a true copy of said written agreement is hereto attached, marked "Exhibit A," and hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that neither said Theodore Regensteiner, Richard Yates Hoffman, Geo. M. Studebaker, Clement Studebaker, Jr., Peter M. Zunker or Henry Vette signed said agreement (Exhibit A"), nor was any of them a party to said "Exhibit A" partnership contract.

This Respondent avers that on and under date of June 30, 1917, said Finn and Hecht made and executed a certain Trust Agreement to and with Chicago Title & Trust Company, an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Company.

This Respondent avers that a true copy of the agreement last mentioned (hereinafter for brevity called Trust Agreement) is hereto attached, marked "Exhibit B," and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This Respondent avers that upon the execution of said Trust Agreement Theodore Regensteiner paid to said Hecht and said Finn as Trustees under and by virtue of said Trust Agreement, and in order to acquire a trust certificate thereunder, and for no other purpose, whatsoever, the sum of Twenty-eight Thousand Five Hundred (\$28,500) Dollars, and there was delivered to this respondent through his attorney under and by virtue of said trust agreement and in consideration of the payment of said sum of \$28,500 the certificate of said Chicago Title & Trust Co. in favor of this respondent bearing date of June 30, 1917, for fifty-seven shares in said The Hecht-Finn Trust, which certificate this Respondent subsequently surrendered to the said Chicago Title & Trust Company for the purpose of having substituted therefor two certificates, one issued
320 for thirty-seven shares issued to this Respondent and the other for twenty shares issued to Israel Grollman in the said The Hecht-Finn Trust, true copies of such certificates are hereto attached and marked "Exhibit C" and "D," respectively, and are hereby referred to and made a part hereof as fully and to the same effect as if incorporated herein. Said certificates were so delivered to said Regensteiner and Grollman on or about the 2nd day of July, 1917.

This Respondent further avers that the original certificate in the name of this Respondent was issued under said Trust Agreement as aforesaid and was delivered to and accepted by this Respondent as aforesaid, in sole reliance upon the terms of said Trust Agreement.

This Respondent further avers that he is not, nor has he ever been, nor had he ever intended to be a partner of any kind in or of

said firm of Marcuse & Co., and is not liable for any indebtedness of said firm.

This Respondent avers that in paying said money and accepting therefor said certificate, he had no intention whatever of becoming a partner of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., and George M. Studebaker, or of any one or more of them, under the name of Marcuse & Co. or otherwise, but, on the contrary, intended not to become a partner with any person whomsoever, as Marcuse & Co. or otherwise, and in good faith believed that he was not becoming, and did not become, a co-partner of Marcuse & Co. or one of the members of said co-partnership of Marcuse & Co. or of any co-partnership whatsoever.

2. This Respondent denies that the Petitioners in said Petition are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, either individually or as co-partners doing business as Marcuse & Co.; and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them are partners of Marcuse & Co. and therefore denies that said Petitioners have any provable claims against any or either of the said last mentioned persons in manner and form as alleged in said Petition.

3. This Respondent denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore
321 Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged partners are insolvent.

This Respondent denies that Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them, are or have been partners doing business as Marcuse & Co. and denies that said firm of Marcuse & Co., or the co-partnership of Marcuse & Co. aforesaid, consists in whole or in part of said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, or any of them.

4. This Respondent denies that within four months next preceding the date of the filing of Petition herein, or at any time whatsoever, the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, individually or as alleged co-partners doing business as Marcuse & Co. committed an act of bankruptcy in manner and form as alleged in said Petition, and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and Peter M. Zuncker are or have been co-partners, or are or have been doing, or did business as Marcuse & Co.

5. This Respondent further denies that he has committed any act of bankruptcy or that he is insolvent in manner and form as alleged in said Petition or otherwise.

6. This Respondent does not submit himself to the jurisdiction of this Court, nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt or for the purpose of having his solvency or insolvency passed upon or for the purpose of having his alleged partnership determined, or otherwise, and he respectfully reserves the right to object to the jurisdiction of this Court to determine the questions of his alleged bankruptcy, solvency and partnership; and now, maintaining and not waiving any of his rights as above set forth, and otherwise, this Respondent denies that he is a partner as in Petition alleged, denies that he, individually or as alleged partner, has committed any act of bankruptcy whatsoever, denies that he is insolvent, individually or as alleged partner, and avers that he should not be declared a bankrupt for any cause whatsoever. Theodore Regensteiner.

322 STATE OF ILLINOIS,
County of Cook, ss:

Theodore Regensteiner, being first duly sworn on oath deposes and says that he is the Respondent named in the foregoing Answer by him subscribed; that he has read said Answer and knows the contents thereof; that he knows the matters and things in said Answer set forth to be true. Theodore Regensteiner.

Subscribed and sworn to before me this 8th day of May, A. D. 1920. Edwin B. Bederman, Notary Public. (Notarial Seal.)

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Theodore Regensteiner of which Exhibit "C" to the Response of Theodore Regensteiner to the Amendment to the Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

323

Exhibit "D" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Israel Grollman of which Exhibit "D" to the Response of Theodore Regensteiner to the Amendment to the Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

[File endorsement omitted.]

That afterwards on the same day, to-wit: on the 8th day of May, A. D. 1920, there was filed in the Office of the Clerk of said Court, the Answer of Peter M. Zuncker to the amended petition of I. Feigel et al., same being in words and figures as follows: to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

The Separate Answer of Peter M. Zuncker to the Amended Petition of I. Feigel, the Amended Intervening Petition of Nathan Jacobs, and the Intervening Petition of W. O. Frazee in the Above-entitled Cause.

[Filed May 8, 1920.]

Now comes Peter M. Zuncker, one of the respondents named in the amended petition of I. Feigel, the amended intervening
324 petition of Nathan Jacobs and the intervening petition of W. O. Frazee filed in the above entitled cause (said various petitions being hereinafter referred to collectively as the petition) and not submitting himself to the jurisdiction of this court, nor waiving any question of jurisdiction herein, and respectfully denying the jurisdiction of this court as to this respondent and as to the subject matter as more particularly set forth hereinafter, responds to said petition and shows why no subpœna may properly issue against this respondent and why this respondent may not properly and lawfully be joined as respondent to any petition in said matter and why this respondent may not properly be made party defendant herein or otherwise and says:

1. This respondent denies that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, (referred to in said petition as Frank Hecht) Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and

this respondent, Peter M. Zuncker, were doing business under the trade name of Marcuse & Co. or have at any time as such had their principal place of business at the City of Chicago, in the County of Cook and State and District aforesaid, or as such, at any time were engaged in the business of buying and selling stocks and bonds and other securities, or that as such, they owe debts to the amount of more than \$1,000.00, or that as such, or otherwise, they are amenable to the acts of Congress in relation to bankruptcy; all in manner and form as alleged in said petition and this respondent denies that said persons were individually and as co-partners doing business as Marcuse & Co. as therein alleged.

This respondent denies that said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, and this respondent Peter M. Zuncker, were copartners as Marcuse & Co., or were doing business under the trade name of Marcuse & Co., or were engaged in the business of buying and selling stocks and bonds or other securities as partners as Marcuse & Co., in manner and form as alleged in said petition or otherwise.

This respondent avers that said Ben Marcuse, Lew H. Morris, Joseph M. Finn, and Frank A. Hecht were engaged in the business of buying and selling stocks and bonds and other securities in the City of Chicago under the trade name of Marcuse & Co. and pur-
325 porting to be copartners under the name of Marcuse & Co.; that other than said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, no person or persons whatsoever were doing said business or purported to do said business under the trade name of Marcuse & Co., or were copartners or purported to be copartners as Marcuse & Co.

This respondent avers that said Business is being conducted by said Ben Marcuse, Lew H. Morris, Joseph M. Finn, and Frank A. Hecht under the trade name of Marcuse & Co. and as the purported copartnership of Marcuse & Co. was conducted and was created under and by virtue of a certain agreement in writing signed and executed by and between said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht and no others, purporting to form among and between them and among and between them alone a limited copartnership under the name of Marcuse & Co., that said written articles of co-partnership were so signed and executed by said Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht on, to-wit: the 30th day of June, A. D. 1917; that a true copy of said written agreement is hereto attached marked Exhibit A and hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This respondent avers that neither said Richard Yates Hoffman, George M. Studebaker, Clement Studebaker Jr., Theodore Regensteiner, Henry Vette or this respondent, Peter M. Zuncker signed said agreement (Exhibit A), nor was any of them a party to said "Exhibit A" partnership contract.

This respondent avers that on and under date of June 30th, 1917, said Joseph M. Finn and Frank A. Hecht made and executed a cer-

tain trust agreement to and with Chicago Title & Trust Co., an Illinois corporation, and thereupon delivered the same to said Chicago Title & Trust Co.

This respondent avers that a true copy of the agreement last mentioned (hereinafter for brevity called trust agreement) is hereto attached marked "Exhibit B" and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This respondent avers that upon the execution of said trust agreement, this respondent acting through his attorney paid to said Frank A. Hecht and Joseph M. Finn under and by virtue of said trust agreement and in order to acquire a trust certificate there-
326 under and for no other purpose whatsoever, the sum of \$25,-
000.00.

This respondent avers further that thereupon said Chicago Title & Trust Co. under and by virtue of said trust agreement and not otherwise, and in consideration of the payment of said \$25,000.00 issued its certificate in the name of this respondent bearing date June 30th, 1917, for fifty (50) shares in the Hecht-Finn Trust created by said trust agreement; that said certificate was delivered by said Chicago Title & Trust Co. to this respondent's attorney for this respondent, and thereafter by said attorney delivered to this respondent a true copy of which certificate is hereto attached marked Exhibit C and is hereby referred to and made a part hereof as fully and to the same effect as if herein set forth in full.

This respondent avers further that said certificate was issued under said trust agreement as aforesaid and was delivered to this respondent in manner as aforesaid and accepted by this respondent in sole reliance upon the terms of said trust agreement.

This respondent avers further that in paying said money and accepting therefor said certificate this respondent had no intention whatever of becoming a partner of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Theodore Regensteiner, Clement Studebaker, Jr., George M. Studebaker, and Henry Vette or of anyone or more of them under the firm name of Marcuse & Co., or otherwise, but on the contrary intended not to become a partner with any person whomsoever as Marcuse & Co. or otherwise, and in good faith believed that he was not becoming and did not become a co-partner of Marcuse & Co., or one of the members of said co-partnership of Marcuse & Co., or of any copartnership whatsoever.

This respondent further avers that he never at any time solicited Frank A. Hecht and Joseph M. Finn, or either of them, to become a partner of Marcuse & Co.; that the sole relation of this respondent to the subject matter of said trust agreement was as hereinabove set forth.

2. This respondent denies that the petitioners in said petition are creditors of said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, and this respondent, either individually or as copartners doing busi-

327 ness as Marcuse & Co., and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and this respondent or any of them are partners of Marcuse & Co. or are doing or did business as partners of Marcuse & Co. and therefore denies that said petitioners have any provable claims against any or either of the said last mentioned persons including this respondent in manner and form as alleged in said petition.

3. This respondent denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, and this respondent individually, or as alleged partners are insolvent.

This respondent denies that Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and this respondent or any of them are or have been partners doing business as Marcuse & Co., and denies that said firm of Marcuse & Co. or the copartnership of Marcuse & Co. aforesaid consist in whole or in part of said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and this respondent, or any of them.

4. This respondent denies that within four months next preceding the date of the filing of petition herein or at any time whatsoever the said Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and this respondent individually or as alleged copartners doing business as Marcuse & Co. committed an act of bankruptcy in manner and form as alleged in said petition and denies that said Clement Studebaker, Jr., George M. Studebaker, Richard Yates Hoffman, Theodore Regensteiner, Henry Vette and this respondent are or have been partners or are doing or did business as Marcuse & Co.

5. This respondent further denies that he has committed any act of bankruptcy or that he is insolvent in manner and form as alleged in said petition or otherwise.

6. This respondent does not submit himself to the jurisdiction of this court nor has he at any time submitted himself to such jurisdiction, for the purpose of being adjudged a bankrupt or for the purpose of having his solvency or insolvency passed upon or for the purpose of having his alleged partnership determined, or otherwise, and respectfully reserves the right to object to the jurisdiction of this court to determine the questions of his alleged

328 bankruptcy and solvency and partnership; and now maintaining and not waiving any of his rights as above set forth and otherwise, this respondent denies that he is a partner as in the petition alleged, denies that he individually or as alleged partner has committed any act of bankruptcy whatsoever, denies that he is insolvent individually or as alleged partner, and avers that he should not be declared a bankrupt for any cause whatsoever. Peter M. Zuncker. Busby, Weber, Miller & Donovan, Attorneys for said Respondent.

STATE OF ILLINOIS,
County of Cook, ss:

Peter M. Zuncker being first duly sworn on oath deposes and says that he is respondent named in the foregoing answer by him subscribed; that he has read said answer and knows the contents thereof; that he knows the matters and things in said answer set forth to be true, except such matters and things as are therein stated to be on information and belief and as to such matters he verily believes them to be true. Peter M. Zuncker.

Subscribed and sworn to before me, a Notary Public, this 7th day of May, A. D. 1920. Arthur A. Anderson, Notary Public. (Seal.)

Exhibit "A" to This Answer.

(Here follows in the original instrument a copy of the Contract purporting to create a limited partnership of which Exhibit "A" to the Response of Clement Studebaker, Jr., and George M. Studebaker to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

Exhibit "B" to This Answer.

(Here follows in the original instrument a copy of the instrument purporting to create the Hecht-Finn Trust of which Exhibit "B" to the Response of Clement Studebaker, Jr., and George M. Studebaker, to the Amendment to the Separate Answer of Joseph M. Finn to the Petition of Harold Lachman is a true, full and correct copy.)

329

Exhibit "C" to This Answer.

(Here follows in the original instrument a copy of the Trust Certificate issued in the name of Henry Vette of which Exhibit "C" to the Response of Henry Vette to the amendment of Joseph M. Finn to the Petition of C. B. Giles, et al., is a true, full and correct copy.)

[File endorsement omitted.]

And afterwards, to-wit, on the 10th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to-wit:

[Title omitted.]

Order of May 10, 1920.

On motion, it is ordered by the Court that the answers heretofore filed herein by Frank A. Hecht and Joseph M. Finn to the original petition of petitioning creditors, stand as their respective answers to the amended petition of the petitioning creditors. Thereupon the

petitioning creditors move the Court to strike the answers of the respondents from the files; which motion is entered and continued.

Upon motion it is further ordered that the time for Ben Marcuse and Lew Morris to answer the petition for adjudication be and it is hereby extended until May 12, 1920.

And afterwards, to wit, on the 10th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

330

[Title omitted.]

Orders of May 10, 1920, May 11, 1920, and May 12, 1920.

This matter coming on to be heard on the amended petition for adjudication and the answers of Joseph M. Finn, et al., the Court having heard the evidence in part, it is Ordered that the further hearing of this cause be and it hereby is continued until May 11, 1920, at ten thirty o'clock A. M.

And afterwards, to wit, on the 11th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

This matter coming on to be heard upon the amended petition for adjudication and the answers of Joseph M. Finn, et al., thereto, it is ordered that time for Ben Marcuse and Lew H. Morris to file their answers to said petition be and it hereby is extended until two days after the hearing on said amended petition and answers has been concluded.

It is further ordered that the hearing of evidence on said amended petition and answers be and it hereby is continued until May 12, 1920, at ten-thirty o'clock A. M.

And afterwards, to wit, on the 12th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

This cause coming on again to be heard on the amended petition for adjudication and the answers of Joseph M. Finn, et al., the Court having heard the evidence in part, it is Ordered that the further hearing of evidence on said petition and answers be and the same hereby is continued until May 13, A. D. 1920, at five o'clock P. M.

331

And afterwards, to wit, on the 13th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

Orders of May 13, 1920, May 14, 1920, and May 17, 1920.

This cause again coming on to be heard on the amended petition for adjudication and answers thereto, the Court having heard the evidence to conclusion and the arguments of counsel in part, it is ordered that the further hearing of said cause be and it hereby is continued until May 14, at five o'clock P. M.

And afterwards, to wit, on the 14th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

This cause coming on again to be heard on the amended petition for adjudication and the answers thereto, the Court having heard the arguments of counsel in part, it is Ordered that the further hearing of this cause be continued until May 17, 1920, at five o'clock P. M.

And afterwards, to wit, on the 17th day of May, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

This cause coming on to be heard upon the motion of Frank A. Hecht and Joseph M. Finn, by their attorney, it is ordered by the Court that leave be and hereby is given said defendants to
332 reopen this cause for the introduction of documentary evidence.

Whereupon come the parties by their attorneys and the Court having heard the arguments of counsel to conclusion, takes said matter under advisement.

And afterwards, to wit, on the 18th day of June, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Withdrawal of Mayer, Meyer, Austrian & Platt, and substitution of Tenney, Harding & Sherman, as attorneys for Frank A. Hecht; same being in words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Withdrawal and Substitution of Attorneys for Frank A. Hecht.

[Filed June 18, 1920.]

We hereby withdraw our appearance as attorneys for Frank A. Hecht, one of the alleged bankrupts in the above entitled cause, and consent to the substitution of Tenney, Harding & Sherman as attorneys for said Frank A. Hecht. Mayer, Meyer, Austrian & Platt.

We hereby enter our appearance as attorneys for said Frank A. Hecht, alleged bankrupt, in substitution for Mayer, Meyer, Austrian & Platt, withdrawn. Tenney, Harding & Sherman, Attorneys for Frank A. Hecht.

I hereby consent to the foregoing withdrawal and substitution of attorneys. Frank A. Hecht.

Endorsed: 28339. Re. Ben Marcuse, et al., Bankrupts. Withdrawal and Substitution of Attorneys for Frank A. Hecht. Filed June 18, 1920. John H. R. Jamar, Clerk.

333 And afterwards, to wit, on the 1st day of July, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

[Title omitted.]

Orders of July 1, 1920, and Aug. 6, 1920.

Cause referred to Referee Wean for hearing on assets and liabilities up to March 11th, 1920, and directing finding of facts and conclusions of law, as to solvency up to March 11th, 1920, of Ben Marcuse, Lew H. Morris, Joseph H. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, composing the firm of Marcuse & Co.

In proceeding under this order the Referee will not consider transactions shown by the books of Marcuse & Company to have been closed prior to March 11th, 1920.

And afterwards, to wit, on the 6th day of August, A. D. 1920, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Order.

This matter coming on to be heard upon motion of Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, by their respective attorneys, and
334 it appearing that the Court has this day signed and approved the original certificate of evidence covering all of the evidence offered and received, and the evidence offered and refused, and the rulings of the Court upon the questions of law arising thereon, upon the hearing of the above entitled cause upon May 10th, 1920, and upon the days following, upon the partnership issue raised by the amended petition of the original petitioning creditors and the intervening petitioning creditors, and the answers thereto, and certain proceedings in connection therewith.

It is hereby Ordered that leave be, and the same is hereby, given to Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker to file the said certificate of evidence as a part of the record in the above entitled cause and that leave be, and the same is hereby, given to substitute copies of all documentary exhibits introduced in evidence upon said hearing in lieu of the originals thereof. Kenesaw M. Landis, District Judge.

And afterwards, to wit, on the 6th day of August, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Certificate of Evidence; same being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Certificate of Evidence.

[Filed Aug. 6, 1920.]

Be it remembered that heretofore, to-wit, on the 10th day of May, A. D. 1920, before the Honorable Kenesaw M. Landis, one of the Judges of said Court, this cause came on for hearing upon
335 the amended petitions of the original petitioning creditors and intervening petitioning creditors, and answers thereto.

Leo. F. Wormser, Esq., Appeared for Benjamin Marcuse;
Michael Feinberg, Esq., Appeared for Lew H. Morris;
Messrs. Mayer, Meyer, Austrian & Platt, by Henry Russell Platt
and Carl Meyer, Appeared for Frank A. Hecht and Joseph M. Finn;
George W. Miller, Esq., Appeared for Henry Vette and Peter M.
Zuneker;

Louis Grollman, Esq., appeared for Theodore Regensteiner;
Messrs. Donald Defrees, Esq., and Stephen E. Hurley, Esq., Ap-
peared for Richard Yates Hoffman, Clement Studebaker, Jr., and
George M. Studebaker;

Jacob Ringer, Esq., Michael Gesas, Esq., and Louis F. Jacobson,
Esq., Appeared for the Petitioning Creditors;

Julius Moses, Esq., Appeared for the Receiver and Harold Lach-
man;

Elias Mayer, Esq., Appeared for Marcuse & Company;

Guy M. Peters, Esq., Appeared for certain creditors;

Frank Schoenfeld, Esq., Appeared for certain creditors.

EMIL O. ENGSTROM, called as a witness on behalf of the Petition-
ing Creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. What is your name?

A. Emil O. Engstrom.

The Court. Wait a moment. Is every interest represented here?

Mr. Jacobson: Yes, your Honor.

The Court: Are you prepared to go right on and finish this?

Mr. Jacobson: Yes. We are prepared to go on with everything
but the question of solvency of the individuals whom your Honor
may hold to be partners.

The Court: All right.

Mr. Jacobson:

Q. What is your name, please?

A. Emil O. Engstrom.

336 Q. And your address?

A. 3524 Medill avenue.

Q. Were you connected with the firm of Marcuse & Company?

A. I was.

Q. Were you consulted about April, 1917, with respect to that
firm?

A. I do not quite understand the question.

Q. Was there a contract entered into about April 1st or 2nd, 1917?

Mr. Miller: That is objected to as asking for a pure conclusion of
the witness.

Mr. Jacobson: Mr. Platt, will you produce the original contract,
please.

(Mr. Platt produces document.)

Q. Do you know Ben B. Marcuse?

A. I do.

Q. Lew H. Morris?

A. Yes.

Q. Joseph M. Finn?

A. Yes, sir.

Q. Frank A. Hecht, Junior?

A. Yes.

Q. Henry Vette?

A. Yes.

Mr. Platt: Pardon me. Do you mean "Senior"?

Mr. Jacobson:

Q. Frank A. Hecht, Senior.

A. Yes, sir.

Q. Peter M. Zuncker?

A. Yes.

Q. Joseph M. Finn?

A. Yes.

Q. Theodore Regensteiner?

A. Yes.

Q. Richard Yates Hoffman?

A. Yes.

Q. Clement Studebaker?

A. Not personally.

Q. I can't hear you.

A. Not personally.

Q. And George M. Studebaker, Junior?

A. No, I do not.

Q. I show you what purports to be a contract, dated the 2nd day of April, 1917, that appears to have certain signatures torn
337 off. I will ask you to state if you saw the original of that document at any time?

A. I saw a document or a contract, but don't recollect whether this is the exact copy.

Q. Will you please look it over and state whether it is or not?

A. Yes, I believe that to be the contract.

Q. Do you know whose names were attached to that document, if any?

Mr. Miller: No. The document shows whose names are attached to it, and this witness hasn't yet shown himself qualified.

Mr. Jacobson: I haven't offered it yet. I am identifying whose names, if he knows, were attached to that document.

The Court:

Q. Did you see it before they tore it?

A. Why, as I understand there were two contracts. I saw one, and I can't recollect whether this is the identical contract I saw or not. I believe it is the one.

Mr. Jacobson: Speak up.

The Witness: I saw one contract during the month of April.

The Court: Is there any question about what thing was written or what was torn off?

Mr. Jacobson: I will withdraw this witness and call Mr. Finn.

The Court: This kind of thing I do not like to waste time on. If there is a real, good faith controversy as to what was written on it—

Mr. Miller: I am not going to make any false motions; that is, knowingly false.

(Witness withdrawn.)

JOSEPH M. FINN, called as a witness on behalf of the Petitioning Creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. What is your name, please?

A. Joseph M. Finn.

Q. Where do you live, Mr. Finn?

A. 540 Stratford place.

Q. Were you a member of the firm of Marcuse & Company?

338 Mr. Platt: I do not suppose counsel by that—

The Court:

Q. What is your name?

A. Joseph M. Finn.

Q. Are you the same Finn whose name has been mentioned in connection with Mr. Marcuse and Mr. Lew Morris and Mr. Hecht?

A. Yes, sir.

Q. And these other gentlemen in connection with operating the Marcuse & Company brokerage business?

A. Yes, sir.

Q. You are that Finn?

A. Yes, sir.

The Court: Go ahead.

Mr. Jacobson:

Q. I show you what purports to be a contract, dated the 2nd day of April, 1917 (handing document to witness). Will you please examine it and state whether or not that contract was signed by anybody, and if so, state by whom.

Mr. Miller: He hasn't yet qualified himself to testify whether he knows.

The Court:

Q. Did you ever see that paper before, Mr. Witness?

A. Yes, sir; I have.

Mr. Jacobson:

Q. Did you sign it?

A. I did.

The Court: Is that objected to?

Mr. Miller: I haven't said a word.

Mr. Jacobson:

Q. Who else signed it, if anyone?

A. Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, and Theodore Regensteiner.

Q. And yourself?

A. And myself.

The Court: How do you know they did?

A. I was in the room at the time they signed it.

Q. At the time they personally signed it?

A. At the time each person signed it.

Mr. Jacobson:

Q. What day, do you remember, was that document signed?

A. On the 2nd day of April, 1917.

Q. Who was present? Were you all in one room at that time?

A. We were all in one room at that time.

339 Mr. Jacobson: I offer in evidence as Petitioner's Exhibit 1, the document held by the witness and which he is now identifying.

Mr. Miller: I object to it on the ground that it shows on its face that the signatures are all torn off and that the document has been destroyed.

The Court: Overruled.

Mr. Miller: Exception.

I object to it further for the reason that the answers filed in this case on behalf of those for whom I speak tender a fully executed partnership agreement between Marcuse, Morris, Hecht and Finn, alleging that it was entered into, and there has been no issue raised, no replication filed, no challenge of the accuracy of that document made, so that the pleadings now disclose another and existing partnership document.

The Court: Proceed.

Mr. Miller: Exception.

The Court: That may stand as if repeated to every question aimed at anything that happened preceding the execution of this document, the same as if to each question you interposed the objection specifically.

Mr. Miller: And the record may show in making the objections I have, and that I now make, I make them on behalf of Mr. Vette, Mr. Zuncker, Mr. Regensteiner, Mr. Hoffman, Mr. George M. Studebaker, Mr.——

The Court: On behalf of whoever you have entered your appearance for, certainly.

Mr. Miller: Well, I have entered my appearance for Vette and Zuncker, but I explained a moment ago that I am speaking for all of these other parties here.

The Court: All right.

Mr. Miller: Because of the reason I suggested to you a moment ago.

The Court: Go ahead.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 1, and was and is in words and figures as follows, to-wit:)

340

Petitioners' Exhibit 1.

5/10/20.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It is hereby agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be liable for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be

construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock
341 of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this copartnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

342 Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly installments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed,

and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said co-partnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly installments, which said sum shall be charged against

his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent. (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent (6%) on the cash contributed by him and six per cent (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the

344 amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may be received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse Twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von F. antzius & Company, and thereafter said sum of twenty-five per cent. (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; Provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the

said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: on the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the
345 said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount distributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

346 The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or

under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) And it is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, *the said Marcuse*, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the as-

sets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agreed to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partners guilty of such violation.

In Witness Whereof, the — hereto have hereunto set their hands and seals, the day and — above written. (Signed) Ben —. R. C. U.

Mr. Jacobson:

Q. Mr. Finn, I show you what purports to be a certificate, dated April 2, 1917, and ask you to state if you have ever seen it before.

A. I have.

Q. Do you know the signatures on that certificate?

A. I do.

Q. State whose signatures they are?

348 A. Ben Marcuse, L. H. Morris, F. A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn, and Theodore Regensteiner.

Q. Did the persons whose names you have just stated sign that certificate?

A. They did.

Q. Do you know the date?

A. On April 2, 1917.

Q. Under what circumstances?

A. Well, these gentlemen met for the purpose of entering into an arrangement——

Mr. Miller: No, he can't state the purpose for which they met, I submit.

Mr. Jacobson:

Q. Were those persons who signed that certificate present at that time?

A. They were.

Q. And they all signed at the same time?

A. They did.

Mr. Jacobson: I offer in evidence as Petitioners' Exhibit 2 the document just referred to by the witness, and ask it be marked Petitioners' Exhibit 2.

Mr. Platt: Now, I suggest, Mr. Jacobson, that there are certain pencil interlineations made there subsequently, and I think possibly it may be stated or agreed that those were not there when the document was executed, but that they were put in there at a subsequent time. I have no doubt that that is the fact.

Mr. Jacobson: I will bring that out, Mr. Platt.

Mr. Platt: In other words, this was used as a basis for making a copy of the other, and pencil changes were written in; certain pencil lines run through the copy.

The Court: Bring that out from the witness.

Mr. Jacobson: Yes.

Q. Mr. Finn, at the time this certificate was signed were there any pencil notations on any sheet of that paper?

A. There were not.

Q. Do you know how they came to be there?

A. I do not.

Q. Was it signed in its original condition before any pencil notations were placed on it?

A. Yes.

Mr. Jacobson: I now renew the offer.

Mr. Miller: I object to that as not admissible under the pleadings, because anything that took place prior to the execution
349 of the partnership contract that was finally entered into was merged into that contract, and it is not material here.

The Court: Objection overruled.

Mr. Miller: Exception.

The Court: You needn't save exceptions here. Exceptions save themselves.

Mr. Miller: It is force of habit. We have done that for so many years in the State Courts, your Honor.

The Court: Go ahead.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 2, and was and is in words and figures as follows, to-wit:)

Original Plt. Ex. 2.

5/10/20.

This Is To Certify, That the Undersigned, Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, being desirous of forming a limited partnership under the provisions of an Act of the General Assembly of the State of Illinois, entitled "An Act to Revise the Law in Relation to Limited Partnerships," approved March 18, 1874, in force July 1, 1874, do hereby certify:

(1) That the name or firm under which such limited partnership is to be conducted, shall be Marcuse & Co., the words "& Co." in said firm name referring to L. H. Morris only.

(2) That the general nature of the business to be transacted is the brokerage business of buying and selling for others on commission, stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in.

(3) That the names and places of residence of the general partners are Ben Marcuse, Congress Hotel, Chicago, and L. H. Morris, 440 Diversey Parkway, Chicago; and the names and places of residence of the special partners are Frank A. Hecht, 2952 Lake Shore Drive, Chicago; Richard Yates Hoffman, 1310 E. 54th Street, Chicago; Peter M. Zuncker, 2312 North Kedzie Boulevard, Chicago; Henry Vette, 1257 N. Rockwell Street, Chicago; Joseph M. Finn, 533 Diversey Parkway, Chicago; Theodore Regensteiner, Congress Hotel, Chicago.

350 (4) That the amount of capital stock which each special partner has contributed to the common stock is:

Frank A. Hecht	\$25,000
Richard Yates Hoffman	50,000
Henry Vette	30,000
Peter M. Zuncker	25,000
Joseph M. Finn	31,500
Theodore Regensteiner	28,500

(6) In the partnership articles of agreement by and between the said partners, it is stipulated that the death of any or either of them, except the said Ben Marcuse, shall not work or cause a dissolution of said copartnership, and that in the event of the death of any or either of them, except the said Marcuse, the said copartnership shall continue until the termination thereof by limitations.

In Testimony Whereof, We have hereunto set our hands and seals this 2nd day of April, A. D. 1917. Ben Marcuse. (Seal.) L. H. Morris. (Seal.) F. A. Hecht. (Seal.) Rich'd Yates Hoffman. (Seal.) Henry Vette. (Seal.) Peter M. Zuncker. (Seal.) Joseph M. Finn. (Seal.) Theodore Regensteiner. (Seal.)

STATE OF ILLINOIS,
County of Cook, ss:

I, John L. Anderson, Notary Public in and for said County, in the State aforesaid, Do Hereby Certify that Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given Under my hand and Notarial Seal, this 2nd day of April, A. D. 1917. John L. Anderson, Notary Public. (Seal.)

351 STATE OF ILLINOIS,
Cook County, ss:

Ben Marcuse, being duly sworn, on oath deposes and says that he is one of the general partners named in the foregoing Certificate of Limited Partnership signed by Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, and that the amount specified in said Certificate to have been contributed by each of the special partners, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, the special partners to the common stock, the aggregate of said amount being \$190,000, has been actually and in good faith contributed and applied to the same. Ben Marcuse.

Subscribed and sworn to by the said Ben Marcuse before me, this 5th day of April, A. D. 1917. John L. Anderson, Notary Public.
(Seal.)

Mr. Jacobson:

Q. Mr. Finn, with reference to Petitioners' Exhibit 1, which is the contract you identified, it appears that the last page is torn partly. Do you know how that came to be torn?

A. I do not.

Q. Have you learned the circumstances?

A. No, I have not.

Q. Was there another contract signed about June 30, 1917?

A. There was.

Mr. Jacobson: Will you please produce that, Mr. Platt?

Mr. Platt: I do not know, Mr. Jacobson, that I have the original of that contract here. I will ascertain in a minute. I didn't know that was going to be called for. I will ascertain.

Mr. Jacobson: Your Honor, shall I read this while he is looking for it, or shall we consider it later?

Mr. Platt: You want the contract of limited partnership?

Mr. Jacobson: Yes.

Mr. Platt: This is the original I have. (Producing document.)

Mr. Jacobson:

Q. Mr. Finn, I ask you to look at a contract purporting to be dated April 2, 1917. Will you state if that is your signature appended thereto?

352 A. It is.

Q. Who are the other persons who signed the same?

A. Ben Marcuse, Lew H. Morris, Frank A. Hecht.

Q. Do you know those signatures to be the genuine signatures of those persons?

A. I do.

Q. Do you know the date when that contract was signed?

A. Second day of April, 1917.

Mr. Platt: That is the date of the contract.

The Witness: That is the date it was signed.

Mr. Jacobson:

Q. On what date, Mr. Finn, was this document you have just examined actually signed, if you know?

A. Let me look at it again, please.

Mr. Platt: Let me suggest I have the certificate of acknowledgment executed the same day.

The Witness: To the best of my knowledge this was signed April 2, 1917.

Mr. Jacobson:

Q. Will you please examine the document I now hand you, which purports to be a certificate, acknowledged the 30th day of June, and tell me whether you signed that certificate?

A. I did.

Q. Do you know the day that you signed it?

A. I do.

Q. What day?

A. June 30, 1917.

Q. Does that refresh your recollection as to the exact day on which you signed the contract that purports to be dated April 2, 1917?

A. Are these the final partnership papers?

Mr. Jacobson: Mr. Platt, the witness asked this question: Are these the final partnership papers?

Mr. Platt: Those are the final partnership papers, if your Honor please, and I produced them.

Mr. Jacobson:

Q. Mr. Finn, referring to the contract which bears date April 2, 1917, and which you have testified to be signed by Ben Marcuse, Lew H. Morris, Frank A. Hecht, and Joseph M. Finn, are you now able to state what day this contract was actually signed?

A. This contract I would say was signed April 2, 1917.

The Court: This contract being what? Which contract?

The Witness: The original—the first papers.

The Court: The one that was torn; the torn last page.
353-360 Mr. Jacobson: This is not the first one, at all, Mr. Finn.
This is the last one, Mr. Platt stated.

The Court: Is there any difference about the date on which this thing happened?

Mr. Platt: These were signed the 30th of June. I do not think there is any question about that.

Mr. Miller: He is wrong about that.

Mr. Jacobson:

Q. Mr. Finn, your lawyers have now stated that this particular document, which has not been identified, was signed June 30th. Does that refresh your recollection?

A. Yes.

Mr. Jacobson: I offer in evidence as Petitioners' Exhibit 3 the document just referred to by the witness.

Mr. Miller: Is that the final partnership contract?

Mr. Jacobson: It is.

Mr. Moses: He has inadvertently called it the final partnership agreement.

The Court: I do not care. It doesn't change the character of the document. This is a court case and not a jury case, and counsel isn't under oath when he calls it the final document.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 3, and was and is in words and figures as follows, to-wit:)

Petitioners' Ex. 3.

[Omitted; printed p. 26.]

361 Mr. Jacobson:

Q. Mr. Finn, referring now to the document you have in your possession, can you state who signed that document?

A. Yes.

Q. Who did?

A. Ben M. Marcuse, Lew H. Morris, Frank A. Hecht and Joseph M. Finn.

Q. Are those the genuine signatures of those persons?

A. They are.

Q. On what day was that certificate signed?

A. June 30, 1917.

Mr. Jacobson: I offer in evidence as to Petitioners' Exhibit 4 the document just referred to by the witness, and ask it be so marked.

Mr. Platt: May me have leave to substitute copies for these originals?

The Court: Certainly.

Mr. Platt: I shall have them available in court at any time.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 4, and was and is in words and figures as follows, to-wit:)

Pet. Exhibit 4.

[5/10/20.]

This is to certify that the undersigned Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn being desirous of forming a limited partnership under provisions of an Act of the General Assembly of State of Illinois entitled "An Act to revise the law in relation to Limited Partnerships" approved March 18, 1874, in force July 1, 1874, do hereby certify

362 (1) That the name or firm under which said Limited partnership is to be conducted shall be Marcuse & Co. the words "& Co." in our firm name referring to L. H. Morris only.

(2) That the general nature of the business to be transacted is the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange and Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in.

(3) That the names and places of residence of the general partners are Ben Marcuse, Congress Hotel, Chicago, and L. H. Morris, 440 Diversey Parkway, Chicago; and the names and places of residence of the special partners are Frank A. Hecht, 2952 Lake Shore Drive, Chicago and Joseph M. Finn, 533 Diversey Parkway, Chicago.

(4) That the amount of capital stock which each special partner has contributed to the common stock is

Frank A. Hecht.....	\$95,000.00
Joseph M. Finn.....	95,000.00

(5) That the period at which the said partnership is to commence is July 1, 1917, and the period when it will terminate is June 30, 1922.

In the partnership articles of agreement by and between the said partners, it is stipulated that the death of any or either of them except the said Ben Marcuse, shall not work or cause a dissolution of said copartnership, and that in the event of the death of any or either of them, except the said Marcuse, the said corporation shall continue until the termination thereof by limitation.

In Testimony Whereof we have hereunto set our hands and seals this 2nd day of April, 1917. Ben Marcuse. [Seal.] L. H. Morris. [Seal.] Frank A. Hecht. [Seal.] Joseph M. Finn. [Seal.]

363 STATE OF ILLINOIS,
County of Cook, ss:

I, Henry T. Sanford, a Notary Public in and for said County, in the state aforesaid, Do Hereby Certify, that Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30th day of June, 1917. Henry T. Sanford, Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

Ben Marcuse, being duly sworn on oath deposes and says that he is one of the general partners named in the foregoing certificate of

Limited Partnership signed by Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, and that the amount specified in said certificate to have been contributed by each of the special partners, Frank A. Hecht and Joseph M. Finn, the special partners to the common stock, the aggregate of said amount being \$190,000, has been actually and in good faith contributed and applied to the same. Ben Marcuse.

Subscribed and sworn to by the said Ben Marcuse before me this 30th day of June, A. D. 1917. Henry T. Sanford, Notary Public. My Commission expires Feb. 24, 1918.

Mr. Jacobson: I will ask counsel for Mr. Hecht to produce the certificate that was actually filed with the County Clerk, if he has one, or a certified copy thereof.

Mr. Platt: I have neither an original or certified copy, but I do not think there will be any trouble about agreeing as to the time——

Mr. Jacobson: We have a certified copy, Mr. Platt.

Mr. Platt: —when it was filed.

364 The Court: Is there any reason why you want the original?

Mr. Jacobson: No.

The Court: All right. A certified copy is evidence under the law.

Mr. Jacobson: We offer in evidence as Petitioners' Exhibit 5 a certified copy of a certificate filed in the office of the County Clerk of Cook County on July 2, 1917, and ask it be so marked.

Mr. Platt: May it not be stipulated that as to everything, except file marks, it is the same as Exhibit 4 which you just introduced? That will save some possible——

Mr. Jacobson: Mr. Miller, will you state whether there is any objection to that?

The Court: He hasn't objected. As long as he doesn't object, go right along.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 5, and was and is in words and figures as follows, to-wit:)

Form 28.

Certificate as Keeper of Records and Files (One-half Sheet Size.)

STATE OF ILLINOIS,

County of Cook, ss.:

I, Robert M. Sweitzer, County Clerk of the County of Cook, in the State aforesaid, and Keeper of the Records and Files of said County, do hereby certify that the Certificate attached is a true and correct copy of a Certificate of Limited Partnership of the firm of Marcuse & Co. filed in my office July 2, 1917, all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the County of Cook, at my office, in the City of Chicago, in said County, this 18th day of March, A. D. 1920. (Signed) Robert M. Sweitzer, County Clerk. [Seal.]

365

Petitioners' Ex. 5.

This is to Certify, That the Undersigned, Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, being desirous of forming a limited partnership under the provisions of an Act of the General Assembly of the State of Illinois, entitled "An Act to Revise the Law in Relation to Limited Partnerships," approved March 18, 1874, in force July 1, 1874, do hereby certify:

(1) That the name or firm under which such limited partnership is to be conducted shall be Marcuse & Co., the words "& Co." in said firm name referring to L. H. Morris only.

(2) That the general nature of the business to be transacted is the brokerage business of buying and selling for others on commission, stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in.

(3) That the names and places of residence of the general partners are Ben Marcuse, Congress Hotel, Chicago, and L. H. Morris, 440 Diversey Parkway, Chicago; and the names and places of residence of the special partners are Frank A. Hecht, 2952 Lake Shore Drive, Chicago, and Joseph M. Finn, 533 Diversey Parkway, Chicago.

(4) That the amount of capital stock which each special partner has contributed to the common stock is:

Frank A. Hecht	\$95,000.00
Joseph M. Finn	95,000.00

(5) That the period at which the said partnership is to commence is July 1, 1917, and the period when it will terminate is June 30, 1922.

(6) In the partnership articles of agreement by and between the said partners, it is stipulated that the death of any or either of them, except the said Ben Marcuse, shall not work or cause a dissolution of said copartnership, and that in the event of the death of any or either of them, except the said Marcuse, the said copartnership shall continue until the termination thereof by limitation.

In Testimony Whereof, We have hereunto set our hands and seals this 2nd day of April, A. D. 1917. (Signed) Ben Marcuse. (Seal.) (Signed) Lew H. Morris. (Seal.) (Signed) Frank A. Hecht. (Seal.) (Signed) Joseph M. Finn. (Seal.)

366 STATE OF ILLINOIS,
Cook County, ss:

I, Henry T. Sanford, a Notary Public in and for said County, in the State aforesaid, Do Hereby Certify that Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given Under my hand and Notarial Seal, this 30th day of June, A. D. 1917. (Signed) Henry T. Sanford, Notary Public. (Seal.) My commission expires Feb. 24, 1918.

STATE OF ILLINOIS,
Cook County, ss:

Ben Marcuse, being duly sworn, on oath deposes and says that he is one of the general partners named in the foregoing Certificate of Limited Partnership signed by Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, and that the amount specified in said Certificate to have been contributed by each of the special partners to the common stock, the aggregate of said amount being \$190,000, has been actually and in good faith contributed and applied to the same. (Signed) Ben Marcuse.

Subscribed and sworn to by the said Ben Marcuse before me, this 30th day of June, A. D. 1917. (Signed) Henry T. Sanford, Notary Public. My commission expires Feb. 24, 1918.

(Endorsed:) (Copy.) Limited Partnership Marcuse & Co. Affidavit of Organization. Filed July 2, 1917. Robert M. Sweitzer, County Clerk.

Mr. Jacobson:

Q. Mr. Finn, in connection with the firm of Marcuse & Company how much money did you contribute or pay to anyone?

A. \$31,500, \$31,500.

Q. Did you have any contract signed between yourself,
367-375 Richard Yates Hoffman, Theodore Regensteiner, Henry Vette, and Peter M. Zunker, and others, at any time?

Mr. Platt: Are you alluding to the trust agreement?

Mr. Jacobson: Yes.

Mr. Platt: That was not signed by anybody but Mr. Hecht, Mr. Finn and Marcuse & Company.

Mr. Jacobson: If you will let me have that, Mr. Platt.

(Mr. Platt produces document.)

Q. Will you kindly look at this document, which purports to bear date June 30, 1917, and state if you know whose signatures are attached thereto.

Mr. Platt: The signatures are in the middle, Mr. Finn, because there is an exhibit attached after the signatures.

A. Yes.

Mr. Jacobson:

Q. Whose signatures are they?

A. Frank A. Hecht and Joseph M. Finn.

Q. Do you remember the day that this document was signed?

A. June 30, 1917.

Mr. Jacobson: I offer in evidence as Petitioners' Exhibit 6 the document referred to by the witness, and ask it be so marked.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 6, and was and is in words and figures as follows, to-wit:)

Petitioners' Ex. 6.

5/10/20.

[Omitted; printed p. 33.]

376-382

Exhibit "A."

[Omitted; printed p. 26.]

383 Mr. Jacobson:

Q. How much money did you receive, if any, from Peter M. Zunker at any time about this date?

Mr. Platt: May I correct your question just to save time? The moneys were not paid to Mr. Finn or to Mr.—You have no objection, have you?

Mr. Miller: I certainly have an objection to your making that correction. It isn't true.

Mr. Jacobson: Let me bring it out from the witness.

Q. Mr. Finn, about this time you paid this \$31,500, whom did you pay that to?

A. Paid that to the Chicago Title & Trust Company.

Q. Do you remember the day that you paid it?

A. I paid it in—the day I paid it was June 30, 1917.

Q. Did you pay it by cash or check?

384 A. By check.

Q. I will ask you to examine a certain check produced by Mr. Moses, and state whether that is your signature on that check.

A. It is.

Q. And is this the check you paid at or about that time?

A. It is the check I paid on June 30, 1917.

Q. Now, where were you at the time that you paid this check?

A. I think I was in the office of Marcuse & Company.

Q. What day of the week was that?

A. I think it was a Saturday.

Q. Wasn't it Monday?

A. I think it was a Saturday. I remember coming in from the country purposely to contribute this money.

Q. So now you are sure this was paid at the office of Marcuse & Company?

A. Now, as regards whether it was Marcuse & Company I wouldn't want to swear to that, but that is my remembrance.

Q. This check is made out to Marcuse & Company?

A. Yes.

Q. Who else was there at the time that you were there on this particular day?

A. Mr. Marcuse was there, Mr. Morris, Mr. Hecht, Mr. Regenstein, Messrs. Vette & Zuncker, Mr. Hoffman, and there were several attorneys there.

Q. Do you know who they were?

A. I think Colonel Foreman was there.

Q. Who?

A. Colonel Foreman. I think he was there, and I think Colonel Buckingham was there.

Mr. Miller: Who was that last?

The Witness: Colonel Buckingham, the gentleman right behind you; but I am not sure of the lawyers. I know there were several lawyers. They were very busy around there. I do not want to make an absolute statement, but all the contracting parties were there that day, that is, all those who contributed the money.

Mr. Jacobson:

Q. Now, Mr. Finn, who did Colonel Foreman represent at that meeting?

A. Vette & Zuncker.

Q. And Colonel Buckingham?

385 A. I understood him to represent the Studebakers or this Richard Yates Hoffman.

Q. Well, whom did he represent, so far as you know?

Mr. Miller: That isn't a proper question.

The Court:

Q. Who did he say he represented?

Mr. Miller: That is better.

A. I didn't hear him say, Judge.

Mr. Jacobson:

Q. Who else was there? Was Mr. Elias Mayer there?

A. Mr. Sydney Stein was there.

Q. Anybody else there? Any other lawyer?

A. Well, as I have said before, there were quite a few lawyers. I do not want to swear just exactly who they were.

Q. Who was Sydney Stein?

A. Sydney Stein was an attorney.

Q. And whom did he represent?

A. He represented me.

Q. Anyone else?

A. I think he represented Marcuse & Company.

Q. Who was there representing Mr. Hecht, if you know?

A. I do not know who represented Mr. Hecht.

Q. Who represented Mr. Regensteiner?

A. Mr. Grollman.

Q. Louis Grollman?

A. Yes.

Q. A lawyer?

A. Yes, sir.

Q. And who represented Richard Yates Hoffman?

A. I understood that Colonel Buckingham represented himself, but I testified that I wasn't sure.

Q. Was Mr. Hoffman there?

A. Yes.

Q. Was Mr. Studebaker there?

A. No.

Q. Was Scott Brown there?

A. Which is the larger gentleman of the two? If you will tell me what his name is, that is the one that was there.

The Court: Point him out, Mr. Witness.

The Witness: I do not see him.

The Court: If he is here.

The Witness: It is not this young man here (indicating). It is the other one.

386 Mr. Jacobson: Will the gentleman whom he pointed out stand up and give his name.

Mr. Hoffman: That was me.

The Witness: That was not he.

The Court: That was not he?

A. No, it was the other.

Mr. Jacobson: I offer in evidence as Petitioners' Exhibit 7 the check identified by the witness, and ask it be so marked.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 7, and was and is in words and figures as follows, to wit:)

Pet. Ex. 7.

5/10/20.

Chicago, Ill., June 30, 1917. No. 3545.

Foreman Bros. Banking Co. 2-27.

Pay to the order of Marcuse & Co. \$31,500 # Thirty One Thousand Five Hundred # Dollars. Jos. M. Finn. Cancelling stamp: Paid *7*3*17*2-27. Endorsement on reverse of above check: Marcuse & Co. Also appearing on reverse: Paid through Chicago Clearing House 3 18 Rec. 10 Jul. 3 17 to the State Bank of Chicago. (In upper left-hand margin:) Joseph M. Finn.

Mr. Jacobson:

Q. What other checks did you see there that day?

A. I remember that all the checks were passed through, because at that time——

Q. I didn't ask you that.

The Court: What was the name of the other man? Did he give the name of the other man; who that was?

Mr. Jacobson: He did not, your Honor. He stated Colonel Buckingham was there, and it was not this gentleman.

387 The Court:

Q. You do not know who the other man was?

A. If that gentleman there is Hoffman then it was Scott Brown.

Mr. Jacobson:

Q. Are you sure now Mr. Scott Brown was there on that occasion?

A. The reason why I make the statement that I am sure he was there is because I remember at the time everybody was there that contributed the money on that day.

Q. Now, the check you have produced indicates it was paid July 3, 1917. Does that accord with your own recollection of it?

A. Well, I do not know when it was paid. I paid it in June 30th

Q. You mean you had it there at that meeting on June 30th?

A. Yes.

Q. To what person did you hand your check?

A. I do not know who the individual was, but there was one person at the desk collecting all the checks.

Q. Was his name Engstrom?

A. It is possible that it was Mr. Engstrom.

Q. Who else had checks there at that time?

A. Frank Hecht paid in his check that day.

Q. Do you remember how much Mr. Frank Hecht's check was?

A. \$25,000.

Mr. Moses: I have served notice on these gentlemen to produce these various checks, and I think they are all in court, if they have them. They have promised to produce them.

Mr. Miller: We have them all here, except Regensteiner's check. That should have been here, but by an oversight it isn't, and I have sent for it.

Mr. Jacobson:

Q. I will ask you to look at the checks now handed you and state whether or not you know the signatures on each of those checks; the names of the makers.

Mr. Miller: Let us have those checks identified one at a time.

Mr. Jacobson: All right.

Q. I show you a check purporting to be signed by Henry Vette. Will you state, if you know, who signed that check?

A. Henry Vette signed the check.

Mr. Miller: I admit that is Mr. Vette's signature.

388 Mr. Jacobson:

Q. Was it there that day?

A. Yes, sir.

Q. Was Mr. Vette there with it?

A. He was.

Q. Whom did Mr. Vette hand the check to, if anyone?

A. I do not remember who he handed it to, except that I saw all the checks on the desk that day, and they added up the total and correct amount of the checks.

Q. Who added up the total and correct amount of the checks?

A. I think it was Mr. Engstrom.

Q. This check made out "Frank A. Hecht and Joseph M. Finn"—did you endorse that check?

A. I did.

Mr. Jacobson: I offer in evidence as Petitioner's Exhibit 8 the check referred to by the witness, and ask it be so marked.

(Whereupon said document was received in evidence, marked Petitioner's Exhibit 8, and was and is in words and figures as follows, to wit:)

Pet. Ex. 8.

Chicago, Ill., June 30, 1917. No. —.

Foreman Bros. Banking Co. 2-27.

\$30,000.

Pay to the order of Frank A. Hecht & Jos. Finn \$30,000.00 Thirty thousand # Dollars. Henry Vette. Endorsement: Pay Marcuse & Co. Frank A. Hecht. Jos. Finn. Marcuse & Co. Paid through Chicago Clearing House Jul. 3-17, to the State Bank of Chicago.

Mr. Jacobson: I show you what purports to be a check for \$25,000 by P. M. Zuncker. Do you know the signature on that check?

Mr. Miller: We admit that is his signature.

389 A. I do.

Mr. Jacobson:

Q. Was that handed at the same time and place by Mr. Zuncker to anyone?

A. It was placed on the table, as far as I know.

Q. Did you endorse that check yourself?

A. That is my signature.

Q. Did Mr. Hecht endorse it?

A. That looks like his signature.

Mr. Jacobson: I offer in evidence as Petitioner's Exhibit 9 the check referred to by the witness.

(Whereupon said document was received in evidence, marked Petitioner's Exhibit 9, and was and is in words and figures as follows, to-wit:)

Pet. Ex. 9.

5/10/20.

Chicago, Ill., June 30, 1917. No. —.

Foreman Bros. Banking Co. 2-27.

Pay to the Order of Frank A. Hecht and Jos. Finn \$25,000.00
Twenty five thousand # Dollars. P. M. Zuncker.

Endorsement: Pay Marcuse & Co. Frank A. Hecht. Jos. Finn.
Marcuse & Co. Paid through Chicago Clearing House Jul. 3-17, to
the State Bank of Chicago.

Mr. Jacobson:

Q. I show you what purports to be a check for \$50,000, signed Studebaker Bros. Trust, by some name I can't tell—director—

Mr. Buckingham: Scott Brown.

Mr. Jacobson:

Q. Scott Brown, director, Did you see that at that time and place?

A. I did.

Q. Who delivered that check, if anyone, at that meeting?

A. Scott Brown delivered it, I think.

Q. Was he there at that time?

A. My remembrance is that he was there.

390 Q. And this check is made payable to Richard Yates Hoffman. State whether or not Mr. Hoffman endorsed that check at that time and place?

Mr. Buckingham: We will admit that he did.

A. Well, that I can't answer.

Q. Did you endorse that check, "Joseph M. Finn"?

A. As trustee, yes.

Q. Did Mr. Hecht endorse it at that time and place?

A. That looks like his signature.

Q. All in your presence?

A. It was done, everything was completed that day in that room.

Mr. Jacobson: I offer that in evidence as Petitioner's Exhibit 10.

Mr. Miller: These offers, I take it, Mr. Jacobson, carry with them all endorsements on the checks, too?

Mr. Jacobson: Yes, sir.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 10, and was and is in words and figures as follow, to-wit:)

Pet. Ex. 10.

5/10/20.

Chicago, Jun. 30, 1917. No. 1186.

Studebaker Bros. Trust.

Pay to the order of Richard Yates Hoffman \$50,000.00 Fifty Thousand Dollars. Studebaker Bros. Trust, By Scott Brown, Director. To the National City Bank, of Chicago. 12-221. Endorsement: Pay to the Joint order of Frank A. Hecht and Joseph M. Finn As Trustees. Richard Yates Hoffman. Pay Marcuse & Co., Frank A. Hecht, Joseph M. Finn, as Trustees. Marcuse & Co. Paid through Chicago Clearing House Jul. 3-17, to the State Bank of Chicago.

Mr. Jacobson: Will you gentlemen concede that the paid stamp on the back of the check is the true date when those checks were paid?

Mr. Miller: Yes, I will for my people.

Mr. Jacobson: Let the record show that Mr. Platt, Mr. Wormser, Mr. Miller, Mr. Buckingham—

Mr. Miller: I am speaking for Mr. Grollman.

The Court: The paid stamp on the back, unless it is attacked, is prima facie evidence of what it purports to set forth. Go ahead.

Mr. Jacobson:

Q. I show you a check purporting to bear the signature of F. A. Hecht. Did you see that check at that time and place?

A. Yes, I saw Mr. Hecht hand over his check for \$25,000.

Q. Did Mr. Hecht say anything to you or to anyone at the time that he handed over this check, that you now recall?

A. Didn't say anything to me.

Q. To refresh your recollection, did he ask anyone to hold this check up a certain time?

A. Not that I heard of.

Q. You didn't hear that?

A. I did not.

Q. And was this check handed to Mr. Engstrom, as you now recall?

A. I do not know just what it was handed to. They were all laid on the table.

Mr. Jacobson: I offer in evidence as Petitioners' Exhibit 11 the check referred to by the witness.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 11, and was and is in words and figures as follows, to-wit:)

392

Pet. Ex. 11.

5/10/20.

Number —.

Chicago, June 30, 1917. \$25,000.00.

Continental and Commercial National Bank of Chicago (B3).

Pay to the order of Marcuse & Co. Twenty Five Thousand and 00/100 Dollars. F. A. Hecht. H 521,787. Canceling stamp: "Paid 8-1-17. 2-3."

Following appears on reverse of above check: "Marcuse & Co." Paid through Chicago Clearing House, A. M. 18. Teller. Aug. 1, 1917, to the State Bank of Chicago.

Mr. Jacobson: Now, your Honor, I would like to ask counsel for Mr. Hecht if they concede that the paid check on that stamp is the true date on which that check was paid?

Mr. Platt: We have already made the admission.

The Court: What is the point about that?

Mr. Jacobson: There is a point. That check is paid August 1, 1917, a month after this contract apparently was made.

The Court: Is there an error of the stamp?

Mr. Jacobson: No. I want to make sure that is in the record. That contribution didn't come in until long after the partnership was formed.

Q. I show you a check purporting to bear the signature of Ben Marcuse. Do you know that signature?

A. It looks like Mr. Marcuse's signature.

Q. Was that check presented by him that day, if you know?

A. I remember that check was presented.

Q. At the same time and place?

A. Yes, sir.

Mr. Jacobson: I offer that in evidence, except the notation on the back of the check in blue pencil, which contains the figure "200,000". I offer all of that check, except that notation, as Petitioners' Exhibit 12.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 12, and was and is in words and figures as follows, to-wit:)

Pet. Ex. 12.

5/10/20.

Chicago, June 30th, 1917. No. —.

60,000.00.

Central Trust Company of Illinois (2-23).

Pay to the order of Marcuse & Co. Protectograph \$60,000.00 Sixty Thousand Dollars. Ben Marcuse. A. J. W. Stamp \$60,000*. Member Federal Reserve Bank of Chicago.

Endorsement on reverse of above check. Marcuse & Co. Cancelling stamp: *Paid *7*3*17*. Paid through Chicago Clearing House, 3 18 Rec. July 3, '17, to the State Bank of Chicago.

Written in blue pencil on reverse: 200,000—.

Mr. Jacobson: Will counsel for Mr. Regensteiner admit that Mr. Regensteiner produced at that time and place a check for \$28,500?

Mr. Miller: I will have the check here in just a few minutes.

Mr. Jacobson:

Q. Did you at any time go to the Chicago Title & Trust Company with Messrs. Richard Yates Hoffman, Regensteiner, Vetter and Zuncker and others, at about this same time?

A. I do not remember.

Q. Did you at any time have a meeting of yourself, Vetter, Zuncker, Studebaker, Hoffman and Regensteiner, at the office of the Chicago Title & Trust Company?

394 A. I couldn't say right now.

Mr. Jacobson: I ask counsel to produce certificates, if any, issued to their clients by the Chicago Title & Trust Company.

Mr. Platt: Now, I have here the certificate issued to Mr. Hecht. I can get the certificate issued to Mr. Finn, if you want it to be physically produced. It is identical in all respects with the certificate that was given to Mr. Hecht, except as to the number of shares and the name.

Mr. Jacobson: Will counsel for the other respondents admit that the certificates were issued by the Chicago Title & Trust Company in all respects the same, excepting for the amounts?

Mr. Platt: And the name of the payee.

Mr. Jacobson: The number of shares, and the name of the payee?

Mr. Platt: And the number of the certificates, one, two, three, four, five.

Mr. Miller: We will produce our certificate.

Mr. Jacobson: Very well.

Mr. Platt: Do you want me to send for Mr. Finn's?

Mr. Jacobson: Will you admit the certificate issued to Mr. Finn is all the same, except that the certificate number is different, the name is different and the amount?

Mr. Platt: Sixty-three shares instead of—I make that admission, and will produce the original at any time, if counsel desires.

Mr. Jacobson: It is admitted in the record that a similar certificate to this was issued to Mr. Finn.

Q. I ask you to look at this document handed to me by Mr. Platt, your lawyer, and ask you to state whether you know the signatures on that document?

A. No, I don't know the signatures.

Q. Did you receive a document similar to that from the Chicago Title & Trust Company?

A. Yes.

Q. Who prepared the certificate, if you know?

A. That I can't say.

Mr. Jacobson: I ask counsel for the respondents to state whether they admit this is the signature of the Chicago Title & Trust Company by its president and secretary, and that similar signatures were appended to certificates issued to other members of that trust.

Mr. Miller: Yes.

395 Mr. Jacobson: I offer in evidence this document as Petitioners' Exhibit 13.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 13, and was and is in words and figures as follows, to-wit:)

Petitioners' Ex. 13.

5/10/20.

Certificate No. One.

50 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Frank A. Hecht, is the owner of fifty (50) shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect, as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

396 Dated at Chicago, Illinois, this 30th day of June, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriot, its Vice President. (Corporate Seal.) Attest: R. W. Boddinhouse, its Secretary.

Mr. Platt: I have the Finn certificate in my office.

Mr. Miller: I would like to ask Mr. Platt if Mr. Finn still holds his certificate, or if he has assigned it to anybody else.

Mr. Platt: He still holds it, and it is in my possession. By inadvertence I didn't put it in this envelope.

Mr. Jacobson: I ask now if counsel for respondents, Vette, Zuncker, Regensteiner, Clement Studebaker George M. Studebaker, and Richard Yates Hoffman,—if they will produce before the close of the hearing the various certificates issued to them, respectively, or any of them.

Mr. Miller: On behalf of Mr. Zuncker I produce his now. On behalf of Mr. Vette we have not been able to find Mr. Vette's certificate, but it is exactly the same as Mr. Zuncker's except it is No. 5 for 60 shares, while Mr. Zuncker's is No. 6 and for 50 shares.

Mr. Jacobson: And will you produce the certificate issued to Mr. Richard Yates Hoffman?

Mr. Miller: It is on the way here now.

Mr. Jacobson: On the way. And Mr. Regensteiner's?

Mr. Miller: Yes.

Mr. Platt: I will send for Mr. Finn's certificate, Mr. Jacobson.

Mr. Jacobson: Thank you.

I offer in evidence as Petitioners' Exhibit 14 Certificate No. 6 produced by counsel for Mr. Peter M. Zuncker.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 14, and was and is — words and figures as follows, to-wit:)

397

Petitioners' Ex. 14.

5/10/20.

[Omitted; printed p. 252.]

398 Mr. Jacobson:

Q. Mr. Finn, state if you know whether any arrangement was made to pay for the expense of Marcuse & Company's office at 130 South La Salle street between April 2, and July 1, 1917, at any time?

A. I do not know anything about that.

Mr. Miller: Objected to as immaterial. He has answered.

Mr. Jacobson: What was the answer?

The Witness: I do not know anything about that.

Mr. Jacobson:

Q. To refresh your recollection, did Mr. Marcuse at that time and place, on June 30, 1917, when these checks were produced, state that there was an item of thirteen thousand and some odd hundred dollars for rent and other expenses of the office between April 2nd, 1917, and that day?

A. Not to my recollection. I do not know anything about it.

Q. Mr. Finn, do you know how it came about that the certificates that you have just identified, and which were issued by the Chicago Title & Trust Company, came to be made out?

A. Yes.

Q. Will you state the circumstances?

Mr. Miller: Now, if the Court please, we have before us certain written documents which provide for the making out of these certificates, signed by Mr. Hecht, Mr. Finn himself. I object to this as immaterial. The documents speak for themselves.

The Court: Objection overruled.

Mr. Jacobson:

Q. Go ahead, Mr. Finn.

A. At the time of the—at the time I was asked to contribute into the funds that was to make up the Marcuse & Company capital, I was told that several other gentlemen would constitute——

Mr. Miller: Told by whom?

Mr. Jacobson: I will bring it all out. Just give the witness a chance.

The Court: Go ahead.

Mr. Jacobson:

Q. Go ahead.

The Court: Somebody told you something. What was it?

A. I was told that there was several other gentlemen——

Mr. Miller: Your Honor, is that admissible against my people?

The Court: It isn't against them yet. Go ahead. It may not get against them. I do not know.

399 Mr. Miller: Musn't they qualify first?

The Court: Go ahead. What did he tell you?

A. I was told that Messrs. Studebaker, Vette and Zuncker, Frank A. Hecht, and Mr. Regensteiner were willing to contribute certain sums of money to make up the capital of the firm, and if I wouldn't put in some money. If I remember correctly, I was the last man to contribute—who was asked to contribute into the firm.

The Court:

Q. Who was it that told you this?

A. Mr. Marcuse.

Q. Who was it told you this?

A. Mr. Marcuse.

Q. Mr. Marcuse?

A. Mr. Marcuse and Sydney Stein approached me on several occasions and asked me if I wouldn't help this new business along, and after finding out the names of all those who had signified their willingness to come in, and it was made very plain to me I would be a special partner, and no liability, I finally, after a great deal of persuasion on the part of Mr. Sydney Stein and on the part of Mr. Marcuse and Mr. Mayer—Elias Mayer asked me to participate into it—I finally made my contribution.

Mr. Miller: Now, on behalf of the parties for whom I speak I move to strike out all of that answer as not admissible against any of them.

The Court: Objection overruled.

The Witness: I do not believe I have completed my answer.

The Court: It may have to go out, but I will let it stay in for awhile.

Mr. Jacobson: The witness hasn't finished his answer. Proceed.

A. At that time it was understood—I was informed that we all would be special partners——

Mr. Miller: I object to that. He can't testify to somebody else's understanding.

The Court: He himself struck it out, anticipating your objection. Go ahead. He was informed.

Q. By whom, Mr. Witness?

A. By Mr. Sydney Stein and Mr. Mayer and Mr. Marcuse, and it was some time after that April meeting that I was told that the New York Stock Exchange would not permit——

Mr. Miller: Told by whom?

The Court: Go ahead.

400 The Witness (continuing): Would not permit as many special partners as there was originally intended, and on that account they asked me if I would act as a special partner; that Mr. Hecht—I was told at the time that Mr. Hecht was willing to do so, and that the other special partner would enter into an arrangement through what would be known as the Finn-Hecht Trust, which would bind them to us in the same manner as if they would be special partners. That was my understanding at the time.

Mr. Miller: I object to it.

The Court:

Q. Who was it told you that?

A. Mr. Mayer, Mr. Stein. Mr. Stein and Mr. Mayer, as my attorneys, told me that.

Mr. Miller: I move to strike all that out on behalf of the people for whom I am speaking.

The Court: That is no evidence against your clients. It will have to stay in, however.

Mr. Jacobson: I will connect it up.

Mr. Miller: But even this ought to be governed by the rules of evidence.

The Court: Certainly. This is no evidence against the people whom you represent. This is the witness' statement of a statement to him by the representatives of another interest—not your client. Go ahead.

Mr. Jacobson: Now, Mr. Finn, at the time that this document, which you have identified as Petitioners' Exhibit 1, was signed—

The Court: I am assuming that your testimony as to when this last statement was made to you, as to the effect of what was to be done or had been done upon all these other men who were going to be, as you say, special partners under the original arrangement—was this thing said to you in the presence of all these men, or did your lawyer or Mr. Mayer tell that to you away from these other people?

A. I would say that he told me away from the other people.

The Court: All right.

Mr. Miller: May I ask this question: Is Hecht and Finn—is their situation on trial here, too?

The Court: Yes; everybody is on trial.

Mr. Miller: I thought you had disposed of that; all except entering the final order.

Mr. Jacobson: We are making our record.

The Court: Go ahead.

401 Mr. Jacobson:

Q. Mr. Finn, at the time this contract, which is dated April 2, 1917, and which has been offered in evidence as Petitioners' Exhibit 1, was signed, will you state where that was signed, in whose office, if you know?

A. I think this was signed in Colonel Foreman's office.

Q. Who was there, if you remember, at that time?

A. Do you want me to itemize the names?

Q. Yes. Speak up, please.

A. Mr. Marcuse was there, Mr. Morris, Mr. Hecht, Richard Yates Hoffman, Henry Vette, Peter Zuncker, Mr. Regensteiner and myself. The lawyers—I remembered a few of the lawyers. Colonel Foreman was there.

Q. Whom did he represent?

A. I understood he represented Vette and Zuncker.

The Court: In order that there may be no waste of time on any useless issue here, that is a fact, isn't it, Mr. Miller? Colonel Foreman appeared on those occasions for Vette and Zuncker?

Mr. Miller: Not all of those occasions. He appeared on the one occasion the witness is talking about when they signed this undelivered contract.

The Court: There has been evidence of his being there on other occasions.

Mr. Miller: Yes, but it isn't correct. There is evidence that on June 30th he was over at Marcuse & Company when these checks were delivered. That isn't correct. He was not there.

Mr. Jacobson: We challenge the statement.

The Court: I am not asking you as to what erroneous testimony has been given, that he was some place when he wasn't.

Mr. Miller: The men he represented—

The Court: He represented Vette and Zuncker?

Mr. Miller: Yes.

Mr. Jacobson: Will you make the same concessions with respect to Colonel Buckingham representing the Studebaker Trust, Clement Studebaker or George M. Studebaker? Upon any occasion that Colonel Buckingham was present was he there as the representative or attorney of—

Mr. Miller: There wasn't any occasion that the witness as yet testified to when he was present, so I can't make any stipulation of that sort for you. He tells me he was not present on the 30th of June when these checks were given.

Mr. Jacobson: The witness has stated he was.

402 The Witness: I said, "I think." I didn't swear to it.

This gentlemen hight here, this attorney, was also there on April 2nd (indicating).

Mr. Miller: Yes, he refers—

Mr. Jacobson: He refers to Mr. Egbert Robertson.

Mr. Miller: Yes, he was there.

The Witness: Did I say Mr. Stein was there?

Mr. Jacobson:

Q. No, you started in to tell the attorneys. Will you proceed now?

A. The attorneys I remember—

Q. At the meeting on April 2nd, 1917, when the contract you hold in your hands was signed.

A. The attorneys that I remember that were there on April 2nd were Sydney Stein, Colonel Foreman, and whatever that gentleman's name—what is his name?

Q. Egbert Robertson.

A. Egbert Robertson. Now, those I remember. There may have been others. There was quite a crowd in the room at the time.

Q. Was Mr. Elias Mayer there?

A. I am not positive.

Q. Where was this meeting?

A. Colonel Foreman's office.

Q. And at that time after that contract was signed what, if anything, was said about conducting the office of Marcuse & Company at 130 South La Salle Street?

A. I do not remember anything being said.

Q. Did you know where you were going into business under that name?

A. I understood that we were going to continue the business in the same place that Von Frantzius & Company was in business.

Q. Who did the talking at this meeting when all those persons were there, if anyone?

A. I think the attorneys did most of the talking. I do not remember just what they said.

Q. Did any of the attorneys state where this business was to be conducted?

A. I do not remember. I wouldn't want to make that statement.

Q. Did anybody state as to who was going to qualify under the stock exchange rules at that time?

A. I do not know whether the statement was made at that particular time.

403 Q. Referring now only to that particular time, who outlined the future progress of this business, if anyone, at that meeting?

A. I do not remember that there was any outlining of the future progress of the business at that time.

Q. How long did you all stay there?

A. Long enough to read over these papers and sign them up. I wouldn't say. Probably an hour or two.

Q. The paper you are holding in your hand is Petitioners' Exhibit 1. By the way, coming back to the day that the checks were delivered to the office of Marcuse & Company, state whether or not there was any check delivered by Mr. Lew Morris?

A. My answer to that would be that on account of hearing somebody say that the entire amount is here, I would say on that account it would be there.

Mr. Jackson: Your Honor, I move to strike that out. It isn't at all responsive.

The Court: Strike it out.

Mr. Jacobson:

Q. Did you see Lew Morris deliver any check at that time?

A. I wouldn't want to swear to it.

Q. What is your best recollection?

A. My best recollection is that all the checks were there for the total amount on that day.

Q. Now, after this contract you spoke of being signed in the office of Colonel Foreman was signed, did you have another meeting subsequently?

A. Not that I remember.

Q. Did anything happen in the conduct of this business after this contract of April 2nd, which is shown by Petitioners' Exhibit 1, was signed?

A. I do not quite get your question.

Mr. Platt: The witness has already answered.

Mr. Jacobson:

Q. When were you advised that the firm of Marcuse & Company could not have so many partners?

A. I think I was advised by mail. I think I was in Charlevoix, Michigan, that summer, and, if I remember correctly, I received a letter from Stein, Mayer & Stein to that effect, and that the thing would have to be revised in some way. That is my recollection.

Q. Mr. Finn, have you that letter in your file?

404 A. Well, I do not think I would have, if I received it up there, because I wouldn't keep anything I got at Charlevoix. I would probably tear it up.

Q. About when did you get this letter?

A. Well, I wouldn't want to say.

Q. With respect to the day you signed the last so-called partnership contract, do you know when you got that letter?

A. Well, it was before June 30th.

Mr. Platt: This may possibly help you to get the date. (Handing document to Mr. Jacobson.) It was just shown to me.

Mr. Jacobson:

Q. I show you what purports to be a telegram, dated May, 8, 1917, and will ask you to examine that and state whether, after examining it, it refreshes your recollection as to this transaction?

A. Yes. I would like to revise my last answer. I would like to change it. What I had in mind of the letter I received at Charlevoix was a letter asking me to come down because they were preparing new papers. I remember now that I was informed by my attorneys about in May at this time regarding this.

Q. At what time?

A. During the month of May. Well, about May 8th.

Q. 1917?

A. 1917.

Q. For whom were the attorneys Sydney Stein and Elias Mayer acting, if you know?

A. They were acting for me.

Q. For whom else, if anyone?

A. I understood for Marcuse & Company.

Q. For the firm?

A. For the firm.

Q. By the way, at the time you tendered your check on June 30, 1917, for \$31,500, how much money, if you know, did you have in the bank to you on credit?

A. I do not know, but I had more than \$31,500 in there the day I wrote the check.

Q. Did you hear any conversation from any of the other parties as to whether or not any of them were short, or didn't have or did have money in the bank upon the day they tendered those checks?

A. I didn't hear any such conversation.

Q. Do you recall hearing any conversation with Mr. Marcuse with respect to that item?

A. I do not. I do not remember.

Q. Or Mr. Morris?

405 A. I do not remember of any.

Q. Now, after you received that information from your attorneys about May 8, 1917, what, if anything, did you do about the firm of Marcuse & Company?

A. I do not understand your question.

Q. You do not understand the question?

A. I do not know just what you want me—

Q. I see. When did you folks have another meeting about the conducting of the business in view of the requirements of the New York Stock Exchange?

A. I do not remember of any particular meeting. From time to time my attorneys would take this matter up with me.

Q. Did you discuss it with anyone else, except your attorneys? Did you discuss it with the other persons who had signed that contract?

A. No, I didn't.

Mr. Jacobson: I offer in evidence Petitioners' Exhibit 15, a telegram produced by one of the counsel representing the respondents.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 15, and was and is in words and figures as follows, to-wit):

Petitioners' Ex. 15.

Western Union Telegram.

Class of Service Symbol.

Day Message.

Day letter, Blue.
Night message, Nite.
Night letter, NL.

If none of these three symbols appears after the check (number of words) this is a day message.

Otherwise its character is indicated by the symbol appearing after the check.

Class of Service Symbol.

Day Message.

Day letter, Blue.
Night message, Nite.
Night letter, NL.

If none of these three symbols appears after the check (number of words) this is a day message.

Otherwise its character is indicated by the symbol.

Newcomb Carlton, Pres. George W. E. Atkins, 1st V. P.

Received at corner Jackson Boulevard and La Salle Street, Chicago, 111COK. 34. One Extra. Co. New York, N. Y. 11:52 A. M. May 8-17. 1521. (Pencil Mark) "25." Always open.

Bruno Benjamin Marcuse, 122 S. La Salle St., Chicago, Ills.:

406 The committee on commissions probably would not object to a firm having two special partners if they were not engaged in any other business and were otherwise passed upon favorably by said committee. George W. Ely, Secretary.
11 11 11.

Mr. Jacobson: I will read the telegram: "New York, May 8, 1917. Bruno Benjamin Marcuse, 122 South La Salle Street, Chicago, Illi-

nois. The Committee on Commissions probably would not object to a firm having two special partners, if they were not engaged in any other business and were otherwise passed upon favorably by said committee. George W. Ely, Secretary."

Gentlemen, do you admit that George W. Ely was secretary of the New York Stock Exchange?

Mr. Miller: We do not know about it; whether he was or not. We are not making any objection. For the purposes of this case we are not objecting.

Mr. Jacobson:

Q. Did Marcuse & Company have an office at 122 South La Salle street between April and June 30th, 1917?

A. I don't know.

Q. Weren't you in the office of Marcuse & Company between that period?

A. I would like to change my answer. If you said between—what dates did you say there?

Q. Between April and June 30, 1917?

A. I would say they had an office there, yes.

Q. Was there a sign on the doors and a sign on the windows?

A. That I do not remember.

Q. Do you remember whether the sign stated "Marcuse & Company"?

A. I wouldn't want to say whether the sign was on there during that time.

Q. Was there a board with quotations there daily?

A. I never went into the place to look at the board before June 30th.

Q. You understood the firm had an office after this contract, which is Petitioners' Exhibit 1, was signed, didn't you?

A. I would like to say on June 30th when I went down there to sign up these papers I think Marcuse & Company's name was over the door. I was out of the city before that, so I can't tell you what happened before June 30th.

407 Q. Were you out of the city the entire period from April 2, 1917, and June 30th?

A. No, just during the month of June.

Q. After you signed this contract, which is Petitioners' Exhibit 1, until June 30th, had you been in that office at any time?

A. I do not think I was there—yes, I possibly—well, now, I wouldn't want to swear to it at all on those dates.

Q. Now, after June 30th, 1917, did you notify the Stock Exchange of the formation of the firm?

A. Did I?

Q. Yes.

A. Not that I know of.

Q. Did anyone notify them, of your knowledge?

A. Not that I know of.

Q. Wasn't that stated by Mr. Marcuse, that notification would be made?

Mr. Miller: Stated where?

A. I imagine that the usual method of going ahead—I don't know anything about it personally.

Mr. Miller: I object to a statement by Mr. Marcuse, and the witness' imagination, if your Honor please.

Mr. Jacobson:

Q. Mr. Finn, did you ever yourself audit the books of Marcuse & Company?

A. I did not.

Q. Did you ever appoint an auditor to audit those books?

A. I did not.

Q. Didn't you know you had a right to audit the books at least once each month?

A. Well, I never inquired into the fact, whether I had a right or not, so I would say—I found out since I had the right, but I didn't know at that time.

Mr. Moses: I would like to ask the witness a question, if your Honor please, if I may.

Examination by Mr. Moses:

Q. After the firm of Marcuse & Company began doing business did you ever have any talk with Mr. Marcuse at any time?

A. With who?

Q. Mr. Marcuse?

A. Mr. Marcuse.

Q. With reference to the claim being made by someone
408 that your special partnership was not a special partnership or limited partnership.

Mr. Platt: Is that confined to the period before the bankruptcy proceeding was instituted?

Mr. Moses: It is, of course, confined to the period before the bankruptcy proceeding was instituted.

A. Nobody ever talked to me on that subject, nor did I talk with Mr. Marcuse.

Mr. Moses:

Q. Were you at any time served with process in suits brought against Marcuse & Company?

A. I remember being served once here, oh, in the last six or seven months, I think.

Q. How often were you served with process, do you think, dur-

ing the period between the 30th day of June and the 12th day of March, when the petition was filed?

A. I do not remember much over once; about five or six months ago.

Q. And what would you do with the process when it was served?

A. I would hand it to Mr. Mayer.

Q. And in that process that was served on it do you know how that process ran?

A. I do not understand the question.

The Court:

Q. Were you named in it?

A. I think I was on this one that I am referring to.

Mr. Moses:

Q. Is that the only one you recollect?

A. That is the only one I recollect now, yes, sir.

Q. Do you recollect any conversation, had either with Mr. Mayer or Mr. Stein or Mr. Marcuse, concerning a claim represented by Mr. Wormser that was being presented against Mr. Marcuse in which it was charged that you and Mr. Marcuse and Mr. Hecht and Mr. Morris were general partners?

A. Never heard of it.

Q. You never heard of it?

A. No, sir.

Q. You never had a conversation with any of those men on that subject?

A. Never.

Q. Did you ever say anything to either Mr. Stein or Mr. Mayer when you brought them process with which you were served concerning whether you were a general or special partner?

A. No.

409 Mr. Platt: That also, I suppose, is limited to the period before bankruptcy?

Mr. Moses: I mean before bankruptcy.

The Witness: Never had any conversation of that kind at any time before the failure of this concern.

Mr. Moses:

Q. So that until after the failure of this concern you never heard from anyone, directly or indirectly, that it was claimed by anyone that you and Mr. Hecht were general partners and not special partners in the firm, is that right?

A. Never heard it.

Mr. Jacobson: One more question I omitted to ask the witness. I ask permission now to.

Q. Did you receive any dividends or payments from Marcuse & Company at any time after June 30th, 1917?

A. I did.

Q. What, if anything, did you do with that money?

A. I deposited it in the bank.

Q. Whom did you receive those dividends from?

A. The Chicago Title & Trust Company.

Q. And how did you come to get dividends from the Chicago Title & Trust Company?

A. On account of the arrangement made with the Chicago Title & Trust Company to receive those dividends, and distribute them to me.

Q. Who else, if anyone, besides yourself received dividends at the same time?

A. The Chicago Title & Trust Company would have to tell you that.

Mr. Platt: There is no dispute, is there, about dividends having been paid in accordance with these certificates of interest, or whatever you may term them—trust certificates?

Mr. Miller: Not by us.

Mr. Jacobson: I would ask counsel representing the respondents this question: If they will admit that the payments made by Marcuse & Company from time to time, either as interest or dividends, were distributed to Vette, Zuncker, Richard Yates Hoffman, Regensteiner, Hecht and Finn in accordance with the exhibits heretofore adduced?

Mr. Miller: Well, for the parties I am speaking for we admit that we got our proportionate share according to the certificates we held of the moneys paid over to the Chicago Title & Trust Company for distribution in accordance with the terms of that trust agreement.

Mr. Jacobson: And will you admit that that money came
410 from Marcuse & Company?

Mr. Miller: We supposed it did, yes.

Mr. Jacobson: No.

Mr. Miller: It was paid over by Marcuse & Company according to the terms of that trust agreement to the Chicago Title & Trust Company, and by that company distributed.

Mr. Platt: We make the same admission, of course, on behalf of Mr. Hecht and Mr. Finn.

The Court: You can show that at the opening of court this afternoon, as to the dates and amounts.

Mr. Moses: And have it marked as an exhibit.

Mr. Jacobson: That is all.

Mr. Platt:

Q. You spoke of referring the matter to Mr. Mayer. You meant Mr. Elias Mayer?

A. Elias Mayer, always.

Mr. Platt: That is all.

Cross-examination by Mr. Miller:

Q. Mr. Finn, Mr. Sydney Stein had been your attorney for a good many years, had he not?

A. Yes.

Q. And all through the various stages of the negotiations which led up to the organization of the firm of Marcuse & Company he represented you, didn't he?

A. Yes.

Q. Was it at Mr. Stein's solicitation that you consented to become a member of the firm of Marcuse & Company? And when I say "a member" I draw no distinction between limited and general partners, leaving that entirely out of consideration, but speak of you as a member.

A. Yes.

Q. It was at his solicitation. Now, Mr. Finn, you were present in the office of Colonel Foreman, were you not?

A. Yes, sir.

Q. At the First National Bank on the 2nd day of April, 1917?

A. Yes.

Q. At which time copies of a contemplated partnership agreement were signed by various people?

A. Yes, sir.

411 Q. I produce from my files and now exhibit to you a document, and I call your attention to the last sheet of that document where you will find eight signatures partially torn off. Please look at that document and state if that is one of the duplicate copies of the contract signed that day by Ben Marcuse, L. H. Morris, Frank A. Hecht, Joseph M. Finn, Henry Vette, Peter M. Zuncker, Theodore Regensteiner, and Richard Yates Hoffman?

A. Yes.

Q. That is one of them. I hand you now seven other duplicate originals, and I will ask you to turn to the last sheet of each one of those and look at the remains of the signatures, and state if those seven copies were likewise signed by the same parties on that day?

A. Yes.

Q. Mr. Finn, for the purposes of the record, these documents disclose that the signatures have been torn off or largely torn off, don't they—all of them?

A. Yes, sir.

Q. Was Colonel Foreman at that meeting?

A. Which meeting?

Mr. Jacobson: What have you done with the other question, Mr. Miller?

Mr. Miller: He answered it.

Mr. Jacobson: I object to that question. It is confusing as written in the record. Just previous to that Mr. Miller states "For the purposes of the record these documents appear to have signatures torn off," and Mr. Finn says, "Yes," and the next question is "Was Colonel Foreman present at that meeting?" That is confusing.

The Witness: I didn't answer the last question yet, because I was going to ask what meeting.

Mr. Miller :

Q. I mean the meeting of April 2, when these documents were signed.

A. I am very sure that Colonel Foreman was there.

Q. He was there. Sydney Stein was there?

A. I think so, yes, sir.

Q. And you say Mr. Egbert Robertson was there?

A. Mr. Robertson was at a meeting in Colonel Foreman's office. Now, whether it was April 2nd or not I don't know. I am just trying to remind myself as to whether we had another meeting in Colonel Foreman's office.

Q. I am dealing only with the meeting in Colonel Foreman's office on April 2nd.

412 A. I would say the first time I went to Colonel Foreman's office, that I am quite sure—I wouldn't want to swear to it—that he was there.

Q. Was that the first time?

A. The first time.

Q. Was this meeting of April 2nd when these contracts were signed the first time you went to Colonel Foreman's office?

A. Well, I wouldn't want to swear to it.

Q. Then I come back to my starting point. You do not know whether Egbert Robertson was present on this occasion on April 2nd in Colonel Foreman's office, do you?

A. I would prefer to make no positive statement on that.

Q. Very good. I have your condition of mind. George M. Studebaker was not there?

A. I never met Mr. Studebaker.

Q. And you never met Clement Studebaker, Junior?

A. No, never saw him.

Q. Now, did Colonel Foreman on that occasion make the statement to you gentlemen that he would not consent at that time to the delivery of these contracts, but would insist upon holding them in escrow, or holding them in his possession until certain things were done?

Mr. Jacobson: I object. That is not proper cross-examination.

The Court: Objection overruled.

Mr. Miller:

Q. Did he say that?

A. I do not remember.

Q. Did you leave these eight contracts in the possession of Colonel Foreman?

A. I do not know whose possession they were left in, but I do not remember that I had a copy of it.

Q. Do you know the signature of Ben Marcuse?

A. Well, I can recognize somewhat his signature.

Q. Frank A. Hecht's?

A. I think I could recognize it.

Q. Can you identify Vette's signature?

A. Well, I could when it is along with other signatures, providing mine is there at the same time.

Q. And Zuncker's?

A. Yes.

Q. And Regensteiner's?

A. Yes.

Q. And Hoffman's?

413 A. Yes.

Q. I show you a letter addressed to Joseph M. Finn, bearing date April 3, 1917, which contains a destroyed signature at the bottom of it. Will you look at that signature and state if that is a part of your signature?

A. I would say it looks like a part of my first name, yes.

Q. Well, don't you remember signing that, Mr. Finn.

A. I was just trying to recollect. That is why I took so long.

Q. Read the letter, if you wish. That may help your memory.

A. I would say that I signed it. I think I have some recollection of that.

Q. Now, passing that letter which you have just identified and coming back to the eight original contracts that I showed you a moment ago, these are the contracts that you had in mind with reference to which you were speaking when you answered the questions of Mr. Jacobson a while ago about a contract having been signed by all of these parties on April 2, 1917, aren't they?

A. I would say those are the contracts.

Mr. Miller: I offer these eight documents in evidence as—let me adopt the word "Zuncker" to represent the parties for whom I am now speaking, and I will call them "Zuncker's Exhibits 1 to 8," both inclusive, with the understanding that they are likewise the exhibits of Vette Hoffman, Regensteiner, George M. Studebaker and Clement Studebaker, Junior, and that will be true of all exhibits I offer and mark as Zuncker Exhibits.

Mr. Jacobson: You offer them without explanation as to how these signatures came to be torn off?

Mr. Miller: Why, I offer them just as they are; just as they are.

(Whereupon said documents were received in evidence, marked Zuncker Exhibits 1 to 8, inclusive, and were and are in words and figures as follows, to-wit):

Zuncker's Ex. 1 J.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M.
414 Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It is hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bond, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock
415 of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be for used the benefit of any other person or corporations, except this co-partnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives,

shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-Five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-Five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly installments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good responsible insurance companies as he can procure to issue the same, life insurance in the sum of

One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said co-partnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said
417 business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly installments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits of said business for such period, such excess shall be charged to the expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent. (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent. (6%) on the cash contributed by him and six per cent. (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount on interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and

418 agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: On the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

419 (15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or

hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed of all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death

of any one of the said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall
421 terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written. Ben Marc. L. H. Mor. F. A. He. Richd. Ya. Henry —. Peter M. Z. Joseph M. Theodore Reg.

Zuncker Ex. 2 J.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

422 Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It is hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such cases made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zunker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

423 It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this co-partnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said

Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

424 (7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm whenever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly instalments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance

companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said co-partnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said 425 policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

11. Said L. R. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly instalments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent (6%) on the cash contributed by him and six per cent (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm

for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

426 (13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportions in which the profits are to be divided, as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to wit: On the first of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all
427 times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or

hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May, of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and
428 judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partner-

ship shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special
429 partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In witness whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written. Ben M. L. H. M. F. A. Rich Ya. Henry —. Peter M. Joseph M. Theodore Regen.

Zuncker Ex. 3 J.

Articles of agreement made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

430 Now, therefore, it is hereby agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zunker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be — for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on

431 behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges.

and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this copartnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or

representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly instalments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance com-

panies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said copartnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said copartnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

433 (10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly instalments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent (6%) on the cash contributed by him and six per cent (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he

shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits
434 received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm: Provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: On the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of
435 every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to

said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them, sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and conditions of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all
436 said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partnership

shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and

Trust Company, a corporation, shall liquidate, the affairs and
437 business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written. Ben Ma. L. H. M. F. A. Rich. Y. Hen. Pete. Joseph. Theo.

Zuncker Ex. 4 J.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another

under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It Is Hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become
438 copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zunker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby
439 covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this copartnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or

for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000), in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said

Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly instalments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said co-partnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and
441 Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly instalments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent. (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent. (6%) on the cash contributed by him and six per cent. (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall

have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & 442 Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: On the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said co-partnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of

every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have

443 access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

444 (18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or per-

sons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

445 (20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage, or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above. — Ben Ma. S. N. M. F. A. Rich Y. Hen. Pete. Josep. Theod.

Zuncker Exhibit 5 J.

Articles of Agreement, Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It is Hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be
446 copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liabilities of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said

Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of
447 them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this co-partnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank H. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500);

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall
448 be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly installments, which said sums shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty thousand Dollars (\$50,000) shall be issued to and for the benefit of the said co-partnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said co-partnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expense of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said membership in the New York and Chicago
449 Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly installments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits in said business for such period, such excess shall be charged to expenses of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent. (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent. (6%) on the cash contributed by him and six per cent. (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the per cent. approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent. (25%) of the said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company, and thereafter said sum of twenty-five per cent.

(25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent. (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; Provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said co-partnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said co-partners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: On the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris after making deductions for the amount drawn by him as provided in paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liabilities of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said co-partnership perfect, just and true books of accounts wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said co-partnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or
451 hinderance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidencce of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copart-

452 nership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash vale as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executor or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or
453 character growing out of any and all claims against the former firm of Van Frantz & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written. Beull. L. H. M. F. A. Rich Y. Henr. Peter M. Joseph. Theodore J.

Zuncker Exhibit 6 J.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph H. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It Is Hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange,
454 Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this co-partnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other

cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit.

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Dollars (\$28,000);

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm where-
ever the same may be kept or maintained shall be signed by both of
the said general partners jointly, or by either of them jointly
456 with such other person as may be designated by said Marcuse;
and all evidences of obligation issued in the name of said
firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the
said business the sum of Fifteen Thousand Dollars (\$15,000) per
annum, payable in equal monthly installments, which said sum
shall be charged to the expense of said business.

The said Marcuse hereby further agrees that he will procure to be
issued upon his life, by such good and responsible insurance com-
panies as he can procure to issue the same, life insurance in the
sum of One Hundred and Fifty Thousand (\$150,000); that One
Hundred Thousand Dollars (\$100,000) of said life insurance policies
shall be made payable to and for the benefit of the holders of trust
certificates issued by him until the same are paid or redeemed, and
after all of the said trust certificates shall be paid or redeemed, then
to and for the benefit of the said co-partnership, and that policies for
the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and
for the benefit of the said co-partnership; and it is hereby provided
that all of the premiums payable upon the said life insurance policy
for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm
and charged to the expense of operating said business, and provided
further, that after said trust certificates issued by said Marcuse shall
be paid or redeemed and said policies for One Hundred Thousand
Dollars (\$100,000) shall have become payable to said copartnership,
then from and after said date, the premiums upon said One Hundred
Thousand Dollars (\$100,000) of life insurance shall be paid by and
charged to the expense of said business.

(10) It is hereby further agreed that all membership assessments,
dues and expenses required to be advanced or paid in connection with
the said memberships in the New York and Chicago Stock Exchanges
shall be paid by the said firm and charged to the expense of the said
business.

(11) Said L. H. Morris shall be permitted to draw from the said
business the sum of Five Thousand Dollars (\$5,000) per annum in
equal monthly installments, which said sum shall be charged against
his share of the profits of the business which shall be allowed to him
in manner hereinafter set forth. It is hereby further understood and
agreed that if in any yearly period from April 1st to March 31st the
said sum so paid to said Morris shall exceed his partnership
457 share in the profits of said business for such period, such ex-
cess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall
receive six per cent. (6%) interest upon the capital contributed by
him to the capital or capital stock of said firm and said sums shall
be charged to the expense of operating the said business; provided,
however, and it is hereby understood that no interest shall be paid
upon the said capital where the effect of such payment shall be to
reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent. (6%) on the cash contributed by him and six per cent. (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of the said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Van Frantzius & Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm, provided that until the aforesaid Kesner
458 bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: on the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amount drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however,

that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all leases by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all
459 other things by them, said general partners, made, received, disbursed, acted, done or suffered in said co-partnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or
460 cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executor or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the
461 damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written. Ben M. L. H. Mo. F. A. H. Rich. Y. Henry. Peter M. Joseph. Theodore R.

Zuncker Ex. 7 J.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. M. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It Is Hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bond-, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H.

462 Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter H. Zuncker, Joseph M. Finn and Theodore Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(2) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said membership by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporations, except this co-partnership, and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000), in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five Thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars, (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly installments, which said sums shall be charged to the expense of said business.

464 The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said co-partnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly installments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership share in the profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent. (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall

465 be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said co-partnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent. (6%) on the cash contributed by him and six per cent. (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount on interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm: provided that until the aforesaid Kesner bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose
466 of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said copartners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: On the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March

31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, as that either of them shall and may have access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special
467 partners a monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate either persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed of all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the busi-

ness of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become the surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said
468 partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of each deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and

performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

469 In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.
Ben Ma. L. H. M. F. A. H. Rich Y. Henry. Peter M. Joseph
M. Theodore Rege.

Zuncker Ex. 8 J.

Articles of Agreement Made this 2nd day of April, A. D. 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

Whereas, the said parties desire to become partners with one another under the name of Marcuse & Co., under and by virtue of the limited partnership agreement as hereinafter set forth:

Now, Therefore, It Is Hereby Agreed by and between the said parties as follows, to-wit:

(1) The said parties above named have agreed to become copartners in business and by these presents do agree to be copartners to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other Exchanges in which securities and various commodities are dealt in. Said copartnership shall commence on the Second day of April, 1917, and shall continue for and during the period of five (5) years from and after the said date and terminate upon the expiration of said period.

(2) It is hereby further agreed that the said copartnership shall be a limited one pursuant to the statutes of the State of Illinois in such case made and provided, and the said Ben Marcuse and L. H. Morris shall become and be the general partners of the said partnership, and the said Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore

470 Regensteiner shall be the special partners therein, and it is hereby fully agreed and understood that the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm, and that they shall not be — for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to, in any manner, extend the said liability of the said special partners.

(3) The said Marcuse shall contribute to the capital stock of the said partnership in cash the sum of Sixty Thousand Dollars (\$60,000), together with his stock exchange membership in the New York

Stock Exchange and his stock exchange membership in the Chicago Stock Exchange, subject to the rules and regulations of the said stock exchanges, and in addition to the said sum furnished by said Marcuse, he shall also contribute to the capital stock of said firm bonds of the Kesner Realty Company of the par value of Twenty-two Thousand Five Hundred Dollars (\$22,500).

It is hereby further understood and agreed that the contribution of the said stock exchange memberships as aforesaid by the said Marcuse, and the use of said memberships by the said Marcuse on behalf of said firm shall in no way conflict with any of the rules and regulations of the said respective stock exchanges, and said Marcuse hereby covenants and agrees that he will not sell, assign or transfer said stock exchange memberships or either of them to any person or persons, and that he will not encumber or pledge the same and he will not use the same or permit the same to be used for the benefit of any other person or corporation, except this co-partnership; and in the event of the transfer of the said New York Stock Exchange membership because of the death of said Marcuse or for any other cause, the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm in lieu of the same the sum of Sixty-eight Thousand Dollars (\$68,000); and in the event of the transfer of the said Chicago Stock Exchange membership for said causes aforesaid, or any of them, then the said Marcuse, or his heirs, executors or representatives, shall pay to the said firm the sum of Two Thousand Dollars (\$2,000) in lieu thereof.

(4) The said L. H. Morris shall contribute to the capital stock of said firm the sum of Ten Thousand Dollars (\$10,000) in cash.

(5) Each of the others of said parties hereto hereby agrees to contribute to the capital stock of the said firm the amount set opposite his name, as follows, to-wit:

Frank A. Hecht the sum of Twenty-five Thousand Dollars (\$25,000);

Richard Yates Hoffman the sum of Fifty Thousand Dollars (\$50,000);

Henry Vette the sum of Thirty Thousand Dollars (\$30,000);

Peter M. Zuncker the sum of Twenty-five thousand Dollars (\$25,000);

Joseph M. Finn the sum of Thirty-one Thousand Five Hundred Dollars (\$31,500);

Theodore Regensteiner the sum of Twenty-eight Thousand Five Hundred Dollars (\$28,500).

(6) It is further hereby agreed that all of the capital to be contributed as aforesaid shall be used and employed by the said partnership for the purpose of carrying on the business agreed to be conducted under the terms hereof and for no other purpose.

(7) It is hereby further agreed by and between the parties hereto that at all times during the continuance of this agreement, the said general partners and both of them shall and will give and devote all of their time and attention in and to the conduct of the said partnership business and to the utmost of their skill, ability and

power exert themselves for the joint interest, profit, benefit and advantage of the said partnership business; that the said business shall be carried on under the management of the said Ben Marcuse; that the said general partners shall not, nor shall either of them, carry on or be engaged or interested, directly or indirectly, in any other adventure, business or enterprise, and that the said Morris shall at all times act under the advice and directions of the said Marcuse.

(8) All checks drawn upon the bank account of said firm wherever the same may be kept or maintained shall be signed by both of the said general partners jointly, or by either of them jointly with such other person as may be designated by said Marcuse; and all evidences of obligation issued in the name of said firm shall be signed in the firm name by said Marcuse.

(9) The said Ben Marcuse shall be permitted to draw from the said business the sum of Fifteen Thousand Dollars (\$15,000) per annum, payable in equal monthly instalments, which said sums shall be charged to the expense of said business.

472 The said Marcuse hereby further agrees that he will procure to be issued upon his life, by such good and responsible insurance companies as he can procure to issue the same, life insurance in the sum of One Hundred and Fifty Thousand Dollars (\$150,000); that One Hundred Thousand Dollars (\$100,000) of said life insurance policies shall be made payable to and for the benefit of the holders of trust certificates issued by him until the same are paid or redeemed, and after all of the said trust certificates shall be paid or redeemed, then to and for the benefit of the said co-partnership, and that policies for the sum of Fifty Thousand Dollars (\$50,000) shall be issued to and for the benefit of the said copartnership; and it is hereby provided that all of the premiums payable upon the said life insurance policy for Fifty Thousand Dollars (\$50,000) shall be paid by the said firm and charged to the expense of operating said business, and provided further, that after said trust certificates issued by said Marcuse shall be paid or redeemed and said policies for One Hundred Thousand Dollars (\$100,000) shall have become payable to said copartnership, then from and after said date, the premiums upon said One Hundred Thousand Dollars (\$100,000) of life insurance shall be paid by and charged to the expenses of said business.

(10) It is hereby further agreed that all membership assessments, dues and expenses required to be advanced or paid in connection with the said memberships in the New York and Chicago Stock Exchanges shall be paid by the said firm and charged to the expense of the said business.

(11) Said L. H. Morris shall be permitted to draw from the said business the sum of Five Thousand Dollars (\$5,000) per annum in equal monthly instalments, which said sum shall be charged against his share of the profits of the business which shall be allowed to him in manner hereinafter set forth. It is hereby further understood and agreed that if in any yearly period from April 1st to March 31st the said sum so paid to said Morris shall exceed his partnership

share in the profits of said business for such period, such excess shall be charged to expense of the firm.

(12) Each of the said partners, both general and special, shall receive six per cent. (6%) interest upon the capital contributed by him to the capital or capital stock of said firm and said sums shall be charged to the expense of operating the said business; provided, however, and it is hereby understood that no interest shall be paid upon the said capital where the effect of such payment shall be to reduce the original capital of said copartnership.

In determining the interest to be paid to the said Marcuse upon the capital contributed by him, he shall receive six per cent. (6%) on the cash contributed by him and six per cent. (6%) shall be allowed upon Seventy Thousand Dollars (\$70,000) which is the present approximate value of his said stock exchange memberships hereinabove referred to, and no interest shall be paid to him upon the amount invested in the said Kesner bonds contributed by him towards the capital stock of said firm in excess of the amount of interest received upon the said bonds, until after the said bonds shall have been liquidated by the said firm, when he shall receive interest on the said amount which may have been received by the said firm for the same, provided, however, and it is hereby understood and agreed that he shall receive the interest upon the said bonds paid by or for the maker until the liquidation of the same.

(13) The net profits of the said business shall be divided among the parties hereto in manner as follows:

There shall be paid to the said Ben Marcuse twenty-five per cent (25%) of said net profits until the aggregate of all the profits received by him, exclusive of salary and interest, shall be sufficient to pay all trust certificates issued by him for the benefit of the customers and creditors of the former firm of Von Frantzius & Company, and thereafter said sum of twenty-five per cent (25%) shall be divided among all of the parties hereto except the said Morris, in the proportions in which they have contributed towards the capital or capital stock of said firm.

Ten per cent (10%) of the said net profits of said business shall be paid to L. H. Morris.

All of the balance of the said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm; Provided that until the aforesaid Kesner Bonds shall have been liquidated, their value as a contribution to capital shall not be taken into account in apportioning the net profits.

(14) It is further agreed that the said partners shall and will, during all times during said copartnership, bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business and that may be required for the purpose of managing and carrying on the same, and that all losses of every kind sustained in said business shall be paid by the said co-

partners in the same ratio and proportion as said profits are divided. All and singular the said profits shall be taken or drawn out of the said business by the said partners twice each year, to-wit: On the first day of November for the profits earned for the six months ending on the preceding September 30th, and on the first day of May for the six months ending on the preceding March 31st, excepting, however, that the said Morris shall receive his proportion of the profits annually, after making deductions for the amounts drawn by him as provided in Paragraph 11 hereof. It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.

(15) It is further agreed by and between the said parties that there shall be had and kept by the said general partners at all times during the continuance of said copartnership perfect, just and true books of account wherein each of the said general partners shall enter and set down, or cause to be entered and set down, a true and accurate account of all of the said business of said copartnership and of every transaction thereof, and all books, papers and documents pertaining to said business shall be used in common between the said general partners, so that either of them shall and may have access thereto without any interference, interruption or hindrance of the other, and shall be open and accessible at all times to said special partners without any interference, interruption or hindrance as aforesaid, and also that the said general partners at least once in each year, that is to say, on the first day of May of each year, or oftener if deemed advisable, shall make, yield and render to said special partners, a true, just and perfect inventory and account of all of the assets and property of said partnership and of all of the profits and increase by said general partners or either of them made, and of all losses by them or either of them sustained in and about the said business, and also payments, receipts, disbursements and all other things by them, said general partners, made, received, disbursed, acted, done or suffered in said copartnership business; and shall also, on or about the first day of each month, during this copartnership, furnish and deliver to each of said special partners a

475 monthly trial balance of and pertaining to the accounts and condition of said copartnership business.

(16) From time to time the special partners may designate in writing persons or firms to act as auditors of the business of said copartnership, and from time to time may change such designation and designate other persons or firms as often as they may desire so to do. Such designation in each case shall be in writing, signed by special partners having contributed a majority in amount of the total capital contributed by all said special partners.

The said general partners hereby agree to cause all of the books of account of said firm to be audited monthly by or under the direction of the auditors so designated; and the cost of such audit shall be charged to the expense of said copartnership.

(17) It is hereby agreed that if the auditor or firm of auditors designated by the special partners under the provisions hereof shall

at any time certify in writing to the special partners that the business of said firm is not being conducted in a safe, conservative, and judicious manner, or if said auditor or said firm of auditors shall certify that the said Marcuse is neglecting said business or is incapacitated and by reason thereof is not properly managing the business of said firm, then such certificate shall be as between all said partners conclusive and binding evidence of the facts therein recited and shall be ground for the dissolution of said firm, at the option of the majority of said special partners.

(18) And said parties hereby mutually covenant and agree to and with each other that during the continuance of said copartnership, neither of said general partners shall or will buy or sell on margin any stocks, bonds, securities or commodities of any kind or character, for their own account, for the account of either of them, or for the account of said firm, and that neither of them shall endorse or guarantee any note or instrument or in any other way become surety or bondsman for any person or persons whomsoever or make himself liable or responsible for the debts of another person.

(19) It is hereby further agreed that the death of any or either of the said partners, except said Marcuse, shall not work or cause the dissolution of said copartnership, and that in the event of the death of any one of the said parties, except said Marcuse, the said partnership shall, unless otherwise dissolved under the provisions hereof, continue until the termination of this contract by limitation, provided, however, that upon the death of any partner, an inventory and account shall be taken of all of the property, assets, liabilities and affairs of the said copartnership and the balance due and the interest of each of the said partners, including that of such deceased partner, correctly ascertained and determined. After such ascertainment and determination, the surviving partners shall have the right to purchase the interest of the deceased partner at its cash value as thus ascertained upon the payment of the said sum with interest thereon to the legal representatives of such deceased partner within ninety (90) days from and after the same shall be ascertained. In case of the failure of the partners to purchase the interest of said deceased, as aforesaid, then the interest of the deceased partner shall inure to the benefit of the executors or administrators of such deceased partner.

Upon the death of said Marcuse, the said partnership shall terminate and the affairs of the same shall be liquidated by such person or persons as may be agreed upon by a majority in amount (in accordance with the capital contributed) of the said special partners. In case the said special partners shall be unable to agree upon a person or persons who shall act as liquidator, then the Chicago Title and Trust Company, a corporation, shall liquidate the affairs and business of the said copartnership and distribute the assets among the parties in the proportion to which they shall be entitled to the same.

(20) And the said Ben Marcuse hereby agrees to indemnify, protect and hold the said copartnership and each of the members thereof free and harmless from all loss or liability of any kind or character growing out of any and all claims against the former firm of Von

Frantzius & Company with which the said Marcuse was formerly connected, or against said Marcuse.

(21) In the event of any violation by either of the general partners herein named, of any of the covenants hereof to be kept and performed by him, such partner shall be liable to the others, both general and special, for the damage or injury sustained by the said firm or by any of said partners by reason thereof, and the damage sustained by reason of such violation shall be charged against the capital of the general partner guilty of such violation.

477 In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.
Ben M. L. H. M. F. A. H. Rich. Ya. Henr. Peter M. Joseph. Theo.

Mr. Miller: Now, I offer in evidence the letter of April 3, 1917, identified by Mr. Finn as having been signed by him, and with a portion of his signature torn off, and ask that it be marked Zuncker Exhibit 9.

Mr. Platt: The letter wasn't signed by Mr. Finn. He wasn't the author of the letter.

Mr. Miller: I should have made that clear.

Mr. Moses: It seems to us, if your Honor please, that we ought to object to this on the ground that until the proof comes in as to how they happen to be mutilated they should not be received. There ought to be some promise of that sort made in any event.

Mr. Miller: Maybe I had better read this document to your Honor. (Reading Zuncker Exhibit 9:)

The Court:

Q. You say you signed the assent. Where did you get it?

A. I do not know whether it was mailed to me or I was called to my attorney's office to sign it, but I signed it.

Mr. Jacobson: Your Honor, we object to them offering these documents in evidence now until it comes to their part of the case.

The Court: Oh, this is part of the cross-examination.

Mr. Jacobson: And we further object on the ground that the burden is on them to show these two things were accomplished, and referred to in the letter, before the letter itself becomes pertinent.

The Court: No. Objection overruled.

(Whereupon said document was received in evidence, marked Zuncker Exhibit 9, and was and is in words and figures as follows, to-wit:)

478

Zuncker's Ex. 9 J.

April 3, 1917.

Mr. Jos. M. Finn, 104 S. Michigan Ave., Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius

& Company, now pending in the United States District Court; be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the Estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly, Milton J. Foreman. I assent to and authorize. Jos. MJF-RMc.

479 Mr. Miller:

Q. I now show you a similar letter, containing what purports to be a portion of the signature of F. A. Hecht, and I will ask you to look at that and state if the portion of the signature which remains is in the handwriting of F. A. Hecht.

Mr. Platt: As attorney for F. A. Hecht we will admit he wrote that letter.

Mr. Miller: I offer that in evidence as Zuncker Exhibit 10.

Mr. Burry: If the Court please, ought we not to have an explanation or promise of an explanation as to the mutilation of this paper before it is received in evidence? The signatures are torn off. We would like to know how they were torn off. That is my objection.

The Court: That is a good objection, of course; just as if, instead of being torn off, something was scratched on the face of it.

Mr. Burry: An explanation of the mutilation, or the promise that it will be explained.

Mr. Miller: I will say to the gentleman and to the Court that these eight contracts with the signatures torn off, and these letters which I am now proceeding to identify, with the signatures torn off, were delivered to me by Colonel Milton J. Foreman after this bankruptcy proceeding started, and that I expect to show before I get through that he retained those documents in his possession from the time they were left with him in escrow, on the 2nd day of April, 1917, and they never passed out of his possession.

The Court: The question is how did they happen to tear this signature off.

Mr. Burry: And who tore it.

Mr. Miller: And I expect to show that after this arrangement was abandoned, the arrangement evidenced by these contracts was abandoned by all the parties, these contracts were destroyed by tearing the signatures off, and that the signatures were torn off by Sidney Stein and Egbert Robertson.

The Court: The objection is good. That proof must come in. You are entitled to that.

Mr. Burry: I accept Mr. Miller's statement.

The Court: I say you are entitled to the evidence as to this mutilation.

Mr. Burry: Yes.

480 The Court: But if your adversary undertakes to supply it, those documents may go in preliminary to that.

Mr. Burry: I take this statement that it will be shown.

(Whereupon said document was received in evidencé, marked Zuncker Exhibit 10, and was and is in words and figures as follows, to-wit:)

Zuncker Ex. 10 J.

April Third, 1917.

Mr. Frank A. Hecht, 500 S. Throop Street, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered and that the undersigned shall hold then in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your
481 assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly,
Milton J. MJF—RMc. I assent to and author-. F. A.

Mr. Miller:

Q. I show you now a similar letter addressed to L. H. Morris, and ask you to look at the portion of the signature which remains on that and state if that is the handwriting of L. H. Morris?

A. I would say it looks like his handwriting.

Q. You have no doubt about it, have you?

A. I haven't any doubt.

Mr. Miller: I offer this.

The Court: Is there any question on any of this here? You have all looked at these papers.

Mr. Jacobson: There is no question.

The Court: Then this whole batch of papers goes in. Does each one show which signature has been mutilated?

Mr. Miller: Yes. Then I ask that the Morris letter be marked Zuncker Exhibit 11, that the Zuncker letter be marked Zuncker Exhibit 12, that the Vette letter be marked Zuncker Exhibit 13, that the Regensteiner letter be marked Zuncker Exhibit 14, that the Marcuse letter be marked Zuncker Exhibit 15, and that the Hoffman letter be marked Zuncker Exhibit 16.

Mr. Jacobson: I understand you are going to offer proof of the mutilation before they are finally offered in evidence?

Mr. Miller: I have offered them and they have been received, as I understand it, subject to my promise that I will explain how those signatures came to be torn off.

(Whereupon said documents were received in evidence, marked Zuncker Exhibits 11 to 16, both inclusive, respectively, and were and are in words and figures as follows, to-wit:)

482

Zuncker Ex. 11 J.

April 3, 1917.

Mr. L. H. Morris, 37 South La Salle Street, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz), Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return to me as early as possible. Very truly, Milton F. Foreman. MJF-RMc. I assent to and authorize the —. L. H. M.

483

Zuncker Ex. 12 J.

April 13, 1917.

Mr. Peter M. Zuncker, 220 N. Green Street, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly, Milton J. Foreman. MJF-RMc. I assent to and authorize. Peter.

484

Zuncker Ex. 13 J.

April 3, 1917.

Mr. Henry Vette, 220 N. Green Street, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending, in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly, Milton J. Foreman.

MJF-RMc. I assent to and authorize the —. Henry.

485

Zuncker Ex. 14 J.

April 3, 1917.

Mr. Theo. Regensteiner, 1201 W. Jackson Boulevard, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as

the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly, Milton J. Foreman. MJF-RMc. I assent to and authorize. Theo.

486

Zuncker Ex. 15 J.

April 3, 1917.

Mr. Ben Marcuse, 122 S. La Salle Street, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly, Milton J. Foreman. MJF-RMc. I assent to and authorize. Benn.

487

Zuncker Ex. 16 J.

April 3, 1917.

Mr. Richard Yates Hoffman, 105 South La Salle Street, Chicago, Illinois.

DEAR SIR: The understanding and agreement under which the limited partnership of Marcuse & Company was formed was:

(a) That the proceedings in bankruptcy against Von Frantzius & Company, now pending in the United States District Court, be dismissed.

(b) That definite arrangements should be concluded with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all the estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court may deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration.

It is deemed desirable that until these two things have been accomplished, the partnership agreements be not delivered, and that the undersigned shall hold them in escrow until these two things have been accomplished; after which the contracts shall be delivered to the signers thereof and the partnership become effective.

In the event that either or both of said events shall fail to be accomplished, the partnership agreement shall become null and void, and the undersigned shall cancel the agreements and deliver a cancelled copy thereof to each of the signers.

If the foregoing meets your views, will you please sign your assent thereto upon the copy of this letter which is herewith enclosed, and return it to me as early as possible. Very truly, Milton J. Foreman. MJF-RMc.

I assent to and authorize. Richard.

488 Mr. Miller:

Q. Now, Mr. Finn, you have been shown a telegram which is marked Petitioners' Exhibit 15, purporting to be from the Secretary of the New York Exchange, I take it, advising that the Committee on Commissions probably would not object to a firm having two special partners, if they were not engaged in any other business and were otherwise passed upon favorably by said Committee. When did you first see this telegram, if you ever saw it at all?

A. I wouldn't say I ever saw the telegram. I knew about its contents.

Q. But you do say that not later than May 8th, that about May 8th, 1917, you were advised as to its contents?

A. Yes, sir.

Q. Who advised you?

A. Mr. Stein.

Q. Did Mr. Sydney Stein tell you at that time that because of the position taken by the New York Stock Exchange the contemplated partnership, as indicated by the contracts which were signed on April 2, 1917, would have to be abandoned?

A. No, he didn't say it that way.

Q. Did he say it in substance? Did he say that in substance?

A. I do not remember that he said at any time it would have to be abandoned.

Q. Did he tell you that that partnership arrangement could not go on?

A. Well, that I wouldn't want to swear to, but I—

Q. Did you not know that *on* or about that time that that partnership arrangement could not take effect?

A. I will say that my impression would be that at that time that I think it could not go on because of that telegram, but that it could, however,—the business could go on under some other arrangement.

Q. I am dealing now not with some arrangement to be worked out in the future, but I am dealing specifically with the arrangement or contemplated arrangement evidenced by those contracts signed on the 2nd of April, 1917. You now say, do you, that you did know on or about May 8, 1917, that that arrangement could not be carried out?

A. Well, I wouldn't—no, I would not swear to that. I do know of the receipt of that telegram. It is up to the lawyers as to how to make any future arrangement as to the contract.

489 Q. Didn't Mr. Stein tell you that on account of the position taken by the New York Stock Exchange that the plan evidenced by those contracts could not be carried out?

Mr. Jacobson: The witness has answered that several times. Mr. Stein is dead, and I object to any further interrogation. The question put by Mr. Miller is a rather highly technical one, and the witness has given his best answer to it.

The Court: Answer the question.

A. Your Honor, I said I knew of the receipt of that telegram. Mr. Stein called my attention to it, but I can't say at this time that he told me then as to how he proposed—whether they would abandon that particular project in the manner in which it was then made up, or as to how he intended to go on. I couldn't answer that question.

Mr. Miller:

Q. Did he tell you he would have to work out a new plan?

A. I couldn't answer that.

Q. Did he tell you anything about it at all when he got this telegram?

A. Undoubtedly at that time he must have stated something. What the identical words were I can't state at this time.

Q. You are not now saying whether he advised you that the contract of April 2nd could or could not be carried out?

A. I would not swear to it, no.

Q. Well, Mr. Finn, did you ever see Peter M. Zuncker or Henry Vette to have any talk with them at all between the time you were advised of this telegram of May 8, 1917, and June 30, 1917?

A. I do not remember of any appointment to talk to them. I might have seen those gentlemen in some of these meetings we might have had and in a casual way talked to them, but I——

Q. Do you have any recollection of seeing them?

A. I have no recollection of any important conversation or any——

The Court:

Q. Do you have any recollection of seeing them or talking with them after that telegram down until the 30th of June?

A. I should say in answer to that that I have no recollection of seeing them.

Mr. Miller: He says he has no recollection.

The Court: Yes.

490 The Witness: No recollection.

Mr. Miller:

Q. Is that same thing true as to Theodore Regensteiner?

A. I would say it is true as to all of the rest of them.

Q. All the rest of them?

A. Yes, because I never met them individually. I always met in meetings. I do not remember just the date of the meetings or the dates we had them.

Q. You do not know recollect that you ever had any meeting with any of them between the time you learned of this telegram of May 8, 1917, and the 30th of June, 1917?

A. I wouldn't say we did not have any meetings.

Q. I understand.

A. I cannot at this moment recollect or remember the particular meetings.

Q. Now, Mr. Finn, you knew, did you not, that this contract signed in Colonel Foreman's office on April 2, 1917, contemplated a special partnership which would include as special partners Hecht, Finn, Hoffman, Regensteiner, Vette and Zuncker?

A. Yes.

Q. You knew that?

Mr. Jacobson: Wait a minute. I object to that question. It asks for a conclusion as to the legal effect of that contract.

Mr. Miller: It is preliminary.

The Court. Is there any question about that being the then frame of mind?

Mr. Jacobson: No, your Honor.

The Court: If we can edge in here and get our money it is because these gentlemen slipped, isn't it?

Mr. Jacobson: Yes, your Honor.

The Court: Why waste any time about it? This question is whether or not it didn't contemplate a special partnership agreement.

Mr. Miller:

Q. Now, Mr. Finn, did there not come a time after May 8, 1917, when somebody took up with you the plan of organizing a partnership which should contemplate only two limited partners, and your becoming one of them?

A. Yes, there must have.

Q. Who took that up with you?

A. Mr. Stein, undoubtedly.

Q. Was Mr. Stein the one who persuaded or induced you
491 to go into that limited partnership contract *with* contemplated you and Hecht as limited partners?

A. Yes.

Q. And nobody else?

A. Mr. Mayer also did.

Q. I beg pardon?

A. Mr. Elias Mayer.

Q. Exactly. Anybody else?

A. I do not think I talked to anybody else, outside of Mr. Marcuse might once in awhile indicate his desire to have me do so.

Q. You do not claim that any people for whom I am now speaking,—Vette, Zuncker, Regensteiner and the two Studebakers,—had anything to do with getting you to go into that arrangement, do you?

A. No.

Q. Now, Mr. Finn, when Mr. Stein talked with you about a new partnership contract in which you and Hecht alone were to be limited partners, and Marcuse & Morris general partners, did you not then know that the old contemplated partnership was abandoned?

Mr. Jacobson: I object to the question as it contains a statement of fact in there, and I do not believe it is proper cross-examination.

The Court:

Q. Did you then assume that the old original partnership was abandoned?

A. Yes, I assumed that.

Mr. Miller:

Q. Stein told you so, didn't he?

A. Why, I don't know that he told anybody—

Mr. Jacobson: I object to that. We have been all over that.

Mr. Miller:

Q. Did Stein tell you that it was necessary to work out some other kind of a plan or some new arrangement?

A. Not that I remember.

Mr. Miller:

Q. Now, I show you the original partnership agreement between Marcuse, Morris, Hecht and Finn which you thought you executed on April 2, 1917. You have got that straightened out in your mind now, haven't you Mr. Finn?

Mr. Jacobson: Will you refer to that by the exhibit number?

Mr. Miller:

Q. You have that straightened out in your mind, haven't you?

492 I will in just — second.

Mr. Jacobson: The question is confusing unless Mr. Miller——
The Court: Sustained.

Mr. Miller: He wants me to give the exhibit number. I am hunting for it,—Petitioners' Exhibit 3.

Q. I want to be sure that you have got your mind settled as to the date when you executed that contract. It was June 30, 1917, wasn't it, although it is dated April 2, 1917?

A. Well, I want to say you have got me confused on that all right, but that is my signature on that paper. I wouldn't want to swear to the dates. If June 30th is the date, I will agree to it, and if April 2nd is the date I will agree to it, provided it is the right date. I do not want to put myself on record as to the wrong date.

Q. I now show you Petitioners' Exhibit 6, which I refer to as the Hecht-Finn Trust Agreement. Did you read that document before you signed it?

A. I do not think I read this contract.

Q. You don't?

A. I do not think I did. I think I remember that I took my attorney's word for it,—that that contract was correctly drawn.

Q. I want to call your attention, Mr. Finn, to refresh your memory, to the paragraph signed by Marcuse, Morris, Hecht and Finn where you say, "We, the undersigned, do hereby acknowledge that we have read the foregoing instrument and are familiar with its contents."

A. Yes, I signed it all right that I read it.

Q. Now, having called your attention to that, don't you think you read the whole document?

A. No, I don't think I read that whole document.

Q. Now, Mr. Finn, you had signed a contract with Hecht, Marcuse and Morris obligating you to put \$95,000 into the firm of Marcuse & Company, hadn't you?

A. Well, if I did I only intended to put in \$31,500.

Q. I want to refresh your recollection about that again.

A. I will say in response to questions of that kind I followed the advice of my attorney, and I do not believe I read that contract.

Q. Did you read the original partnership contract with Marcuse, Morris, Hecht and yourself?

A. When you talk about the original——

493 Q. I mean the one I showed you a moment ago as Petitioners' Exhibit 3,—this one (handing document to witness).

A. No, I don't think I read this contract.

Q. How old a man are you, Mr. Finn?

A. I am 48 now.

Q. How long have you been in business life?

A. I will agree I should have read it, if that is what you are trying to get at.

Q. You are an educated man, aren't you?

A. Yes. I think, with good judgment, I should have read it.

The Court: In this Marcuse matter you gentlemen may go until half after two.

(Whereupon an adjournment was taken until 2:30 o'clock of the same day.)

May 10, 1920—2.30 p. m.

In re MARCUSE & COMPANY, Bankrupt.

Landis, J.

Court met pursuant to adjournment.

JOSEPH M. FINN, heretofore called as a witness and sworn, resumed the stand for further cross-examination as follows:

Cross-examination by Mr. Miller:

Q. Mr. Finn, just before his Honor took the noonday recess I had called your attention to the telegram of May 8, 1917. Did you know at that time or do you know now what business Mr. Richard Yates Hoffman was engaged in? Did you know he was a practicing lawyer?

A. No, I did not.

Q. Did you know he was connected with the law firm of Defrees, Buckingham & Eaton?

A. I did not.

Q. Do you know now that that was a fact?

A. No. I don't even know it now.

494 Q. Did you know what business Theodore Regensteiner was engaged in?

A. Yes.

Q. What business was he engaged in?

A. He is in the colortype printing business.

Q. Actively engaged in that business?

A. Well, I suppose he was.

Q. Did you know what business Henry Vette and Peter M. Zuncker were engaged in?

A. I was told they were meat packers.

Q. Actively engaged as such?

A. I don't know.

Q. Well, you did know, did you not that Hoffman, Regensteiner, Vette and Zuncker were engaged in some line of business or occupation at that time?

A. I didn't know anything about Mr. Hoffman, but I knew that the others—I was told that the others were in business, outside of Mr. Regensteiner, whom I knew personally.

Q. Now, Mr. Finn, I direct your attention to the 30th of June, 1917. Where were you when you signed the Hecht-Finn trust agreement which is in evidence as petitioner's Exhibit 6? Where were you when you signed that (handing document to witness)?

A. That is the Hecht-Finn agreement?

Q. Yes. It is the so-called Hecht-Finn trust agreement.

A. The only place I can remember I was on June 30th, was Marcuse & Company's office. If I went anywhere else I don't remember it now.

Q. Do you remember the circumstance of your signing this document?

A. No, I don't.

Q. Was Mr. Hecht present at the time you signed it?

A. Yes.

Q. Was Mr. Sydney Stein present?

A. Mr. Sydney Stein was always present when I signed any papers.

Q. Did you sign it on his recommendation and under his advice?

A. Yes.

Q. Was there anybody else present except Sydney Stein and yourself?

A. That I don't remember.

Q. Was this Hecht-Finn trust agreement, Petitioner's Exhibit 6, signed by you and Hecht at the same time or at the same session when you signed Petitioner's Exhibit 3, which is the partnership agreement between Marcuse, Morris, Hecht and yourself?

A. I couldn't answer that.

Q. Was it after the execution by you and Hecht of Petitioner's Exhibit 6, the Hecht-Finn trust agreement, that the checks that have been introduced in evidence this morning, were delivered or turned over by the various gentlemen who did turn them over?

A. I couldn't answer that.

Q. Well, those checks disclose that they all bear date the 30th of June, 1917. Was that the day they were delivered?

A. That is the day they were delivered, yes.

Q. And are these the only checks that were delivered by Hecht, yourself, Hoffman, Regensteiner, Vette and Zuncker or any or either of them?

A. That I can't answer.

Q. Were they, so far as you have any knowledge?

A. As far as I know I think those are the checks.

Q. You never delivered any other check except the one that has been exhibited here?

A. That is the only check I ever made out.

Q. And you have never seen any checks as coming from any of

these other named gentlemen except the ones that have been exhibited here in court, and in addition to that the Regensteiner check which I was not able to produce this morning?

A. The only checks I have seen were those that were paid on June 30th.

Mr. Moses: That doesn't quite answer your question, Mr. Miller because none of these were paid on June 30th.

The Witness: Those that were delivered, then, on June 30th.

Mr. Miller: I am dealing with the delivery.

A. Yes.

Q. Now, Mr. Finn, to refresh your recollection, aren't you mistaken when you say that at the meeting on June 30th when these checks were turned over, Colonel Buckingham was present?

A. That might be so. I said at the time—I think I said this morning that I was not sure about the attorneys.

Q. Aren't you mistaken in your recollection that Colonel Foreman was present?

A. On June 30th?

496

Q. Yes.

A. I don't believe I made the statement that he was present on June 30th.

Q. Then if it is my misunderstanding that will clear that up.

A. I said it was in his office June 30th. I was in Marcuse's office.

Q. Let me see if I can't clear this up. Aren't these the gentlemen that were present? Egbert Robertson?

A. At what time, please?

Q. On June 30th?

Mr. Moses: In whose office?

Mr. Miller: At the office where these checks were delivered.

Q. You see this handsome looking gentleman sitting here, Mr. Robertson (indicating), he was present, wasn't he?

A. Well, I may be mistaken on where these checks were delivered.

Q. They were delivered—where do you think they were delivered?

A. I thought they were delivered in Marcuse & Company's office. They may have been delivered somewhere else.

Q. Well, wherever they were delivered, Marcuse & Company's office or elsewhere, wasn't Mr. Robertson present?

A. I don't remember him at the time of the checks. I remember him at the time of the first contract, in Colonel Foreman's office.

Q. Don't you recall Mr. Robertson was the one who produced and turned over to you or Hecht the check of Henry Vette and Peter M. Zuncker?

A. No, I don't remember that.

Q. And that Mr. Vette and Mr. Zuncker were not there at all?

A. No. My recollection throughout this matter is that at any meeting we had—there was only two meetings, very plain in my recollection that all the parties were present. That is my recollection, the time of April 2d and the time of June 30th.

Q. Do you have any distinct recollection of Mr. Zuncker and Mr. Vette being there at all on that occasion?

A. Which one?

Q. June 30th, when the checks were delivered.

497 A. I have always been under the thought that all the parties were present, that they were there and handed in their checks.

Q. Is it just an impression that you have, or do you have a clear and distinct recollection with reference to those two men?

A. If you asked me if I was positive I wouldn't say I was positive.

Q. Don't you remember—was Louis Grollman there?

A. June 30th?

Q. That is the date I am dealing with now until I call your attention to something else.

A. He may have been there.

Q. Don't you remember that Mr. Grollman was the one who produced and delivered the Theodore Regensteiner check?

A. No, I don't remember.

Q. And that Theodore Regensteiner was not there?

A. He may not have been there but I was always under the impression that the parties themselves were there.

Q. You do not claim, do you, that Mr. Scott Brown was there?

A. I thought I remembered him being there.

Q. Don't you remember that Mr. Richard Yates Hoffman was there?

A. Well, the reason I say I thought he was not was because if Mr. Richard Yates Hoffman is the smaller one of the two I never remember seeing him until in court here, until this case was on.

Q. Don't you recollect Mr. Richard Yates Hoffman producing the check of the Studebaker Brothers' trust and endorsing it to Hecht and yourself and turning it over to you?

A. No, I don't remember that.

Q. You don't remember?

A. It may be so, but I don't remember.

Q. Who procured for you the trust certificate? Did Mr. Stein get that from the Chicago Title & Trust Company and deliver it to you?

A. I would say that naturally, Mr. Stein being my attorney, he delivered the papers to me.

Q. Do you know who it was, if any one, at these meetings or through these negotiations that I have detailed here, represented Mr. Hecht?

A. No, I don't know.

498 Q. Was there any attorney present at either or any of these meetings that you speak of, assuming to speak for or represent Mr. Hecht?

A. I don't know who represented Mr. Hecht.

Mr. Miller: As soon as the Regensteiner check gets here I would like the right to call his attention to that check, unless my friends

on the other side of the table do that. Otherwise I am through with my part.

The Court: Any redirect?

Mr. Jacobson: Yes, your Honor.

Redirect examination by Mr. Jacobson:

Q. These certificates, of which you received one——

Mr. Platt: I have the trust certificates here, if you wish them (handing documents to counsel).

Mr. Jacobson: Referring now to the trust certificates, Mr. Finn, were these delivered to you on June 30, 1917, or later?

A. I wouldn't be able to answer that.

Q. By the way, I show you certificate No. 2 issued to Joseph M. Finn. Is that the certificate that you received (handing document to witness)?

A. Yes sir.

Mr. Jacobson: I offer this in evidence as Petitioners' Exhibit 16, and ask that it be so marked.

Which document was duly received in evidence as Petitioners' Exhibit 16, and is in words and figures as follows, to-wit:

Pettitioners' Ex. 16.

Certificate No. Two.

63 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Joseph M. Finn, is the owner of sixty-three (63) shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions 499 whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect, as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the back of registry kept by and at the office of the undersigned Trust Company by assign-

ment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 30th day of June, A. D. 1917. Chicago Title and Trust Company, by A. R. Marriot, Its Vice President. (Corporate Seal.) Attest: R. W. Boddinhouse, Its Secretary.

Mr. Miller: If your Honor please, I would like to tell counsel now that I now have in court the original certificate issued to Mr. Richard Yates Hoffman and his assignment of that certificate to Mr. Frank G. Gardner, and the new certificate issued to Mr. Gardner with his blank endorsement, and I hand them to him. There are some cancellation marks upon the Hoffman certificate that were put on there and which have no place there in this controversy.

Mr. Jacobson: Mr. Finn, was the bankruptcy proceedings against Von Frantzius dismissed, to your knowledge?

A. I wouldn't be able to answer that. I have always understood however that such was the case.

500 Q. You don't know when these checks were deposited in the bank to the credit of Marcuse & Company, do you?

A. No, sir.

Q. What time on Saturday, June 30, 1917, was it that these checks were delivered at the office of Marcuse & Company?

A. I think it was in the morning because I left that afternoon on an afternoon boat for out of the city.

Q. You didn't see these checks deposited, did you?

A. No, sir.

Q. Don't know what bank they went into?

A. I don't know anything about them further than what I saw that morning.

Mr. Jacobson: That is all.

Mr. Moses: May I ask a few questions, your Honor?

Examination by Mr. Moses:

Q. When did your boat leave for Charlevoix that afternoon?

A. I don't know the exact time.

Q. You say you remember it was in the morning because your boat left in the afternoon?

A. I came in in the morning on the train and I went from there over to the lawyer's office, and from there we went over to Marcuse & Company Saturday morning.

Q. About what time on Saturday morning?

A. Ten or eleven o'clock.

Q. Do you know a man by the name of Sanford, a notary public?

A. No, I don't know him.

Q. Isn't it a fact that the partnership agreement and the Hecht-Finn trust agreement were both signed at one and the same time in Marcuse's office that morning?

A. Well, I don't know that that is a fact, no. It might have been.

Q. Can you tell us how many papers you signed that morning?

Q. Did you sign any other papers at any other place on that day excepting at Marcuse's office?

A. I wouldn't be able to say. I have in mind as to whether we went over to the Title & Trust Company, but I am not sure.

Q. Well, I show you what purports to be the original
501 papers—I had better take the original that has been offered, Exhibit 6—purporting to be the so-called Hecht-Finn trust and show you the date, June 30, 1917. That is in the handwriting of Mr. Hecht, isn't it (handing document to witness)?

A. It looks like his signature from the handwriting.

Q. On page 12, the next page, appears the notarial certificate of Henry T. Sanford, bearing the date the 30th day of June?

A. Yes, sir.

Q. Then follows the paper which Mr. Miller read to you this morning to the effect that you have read the foregoing instrument that bears likewise the date June 30, 1917, and then follows your signature together with the three others. Now, having that before you, and having also the first page of the instrument before you where it appears that the date of June 30th was inserted in typewriting, does that refresh your recollection at all as to whether or not that instrument was not signed on the same occasion as the instrument known as Petitioner's Exhibit 3, being the co-partnership agreement executed by the four of you gentlemen was signed?

A. I would say that they were signed on the same day. They undoubtedly were signed at those times together.

Q. Well, weren't they signed at one and the same time as part and parcel of one and the same transaction in Marcuse's office?

A. That I couldn't swear to. They were signed the same day.

Q. Well, can you now tell us of any paper that you signed at any other place on that day than at Marcuse's office? Did you draw your check at Marcuse's office?

A. No. I think I drew that beforehand.

Q. Was that check handed to Mr. Stein, your attorney?

A. I am not sure.

Q. Did you make any deposit in the bank that day?

A. I hardly think so, but I am not sure, without looking at my books.

Q. Are you able to testify now that you had a sufficient sum on deposit to your credit?

A. Positively.

Q. At the bank on June 30th?

A. Yes.

Q. When you signed these papers?

A. Yes, sir.

Q. Now as a matter of fact the boat leaves for Charlevoix about six-thirty in the evening, doesn't it?

502 A. I think you are right, and I think all that business was transacted in the morning. I am quite positive of that.

Q. Have you a definite recollection of that, Mr. Witness, now?

A. Yes. I think it was—I know the checks passed in the morning because I think they were anxious to put them in the bank that morning.

Q. Well, if you know the fact, if it is a fact, as I think it will appear here directly, that these checks were none of them deposited until the 2nd day of July, would that refresh your recollection as to when the checks were given?

A. I would still say in the morning.

Q. The second day of July was on a Monday, was it not? June 30th, Saturday, Sunday was the 1st, July 2nd was a Monday?

A. Yes.

Q. That fact doesn't refresh your recollection one way or the other on this subject?

A. No. I am positive it was in the morning, the handing out of the checks.

Q. Before closing of banking hours on that morning?

A. Before—I would say around ten or eleven o'clock in the morning.

Q. Did you see Mr. Engstrom there that morning?

A. Yes, sir.

Q. Was he in and out of that room?

A. He was in and out of the room?

Q. Which room was it, by the way?

A. It was the front, Mr. Marcuse's private office.

Mr. Moses: Mr. Marcuse's private office. I guess that is all.

Mr. Miller: If the Court please, I now have and offer counsel the check of the Regensteiner Colortype Company for the \$28,500 for Mr. Regensteiner, and I have two original certificates, one to Mr. Regensteiner, for thirty-seven shares, No. 8, and one to Mr. Israel Grollman for twenty share-, No. 7, and explain to counsel that a certificate to Mr. Theodore Regensteiner was issued for the total amount here, thirty-seven and twenty, and then that certificate was surrendered by him and these two certificates were issued, dividing that amount between himself and Mr. Israel Grollman in the proportions as shown by these certificates, and I let counsel take them (handing documents to counsel).

Mr. Jacobson: We will call Mr. Engstrom next, your Honor.

503 EMIL O. ENGSTROM, called as a witness on behalf of the Petitioning Creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. What is your name, please?

A. Emil Engstrom.

Q. You were connected with Marcuse & Company?

A. I was.

Q. In what capacity?

A. Office manager.

Q. And had you been connected with von Frantzius & Company?

A. I had been, yes.

Q. And what became of the stuff at 122 South La Salle Street, Chicago, between April 2, 1917, and July 2, 1917, if you know?

A. Why, the office was maintained by Mr. Marcuse, I believe.

Q. On the ground floor?

A. On the ground floor, yes.

Q. What did you have in the office in the way of a brokerage business that was there during that period?

A. Well, I wasn't there until about the 1st of June.

Q. What did you find there about the 1st of June?

A. All the regular equipment.

Q. Did you find the same equipment as respects a brokerage office that had been there when von Frantzius & Company were doing business?

A. Yes. Practically the same.

Q. On the 1st of June did you find a quotation board?

A. Yes, there was a quotation board there.

Q. And were reports coming in over the wires?

A. Yes, they were.

Q. Did you have tickers there?

A. There were tickers, yes.

Q. How many tickers did you have at that time?

A. Oh, possibly three or four.

Q. And what were they, please?

A. New York stock tickers, Chicago stock tickers and board of trade tickers.

Q. Any others?

504 A. Well, the "gossip" tickers, what is called "gossip" tickers.

Q. Were you receiving reports at that time?

A. At what period?

Q. On June 1st, 1917.

A. No, I don't believe so.

Q. Were you receiving financial reports from day to day at that period?

A. Yes.

Q. Did any one mark the quotations as they appeared on the ticker on the blackboard?

A. Yes, they were kept up.

Q. Were there people in the room inspecting it?

A. Yes, there were.

Q. Did that keep on every day, every week day until June 30th?

A. Yes, as I remember.

Q. Now what persons that have been mentioned here did you see in the office of that place of business between June 1st and June 30th?

A. Oh, I don't remember, exactly.

Q. Was Mr. Marcuse there in that period?

A. Yes.

Q. There every day?

A. Every day.

Q. Mr. Morris there?

A. Yes, he was.

Q. Were you there?

A. I was there practically every day.

Q. Was Mr. Hecht there?

A. Well, he was there. I wouldn't say every day.

Q. Did you see Mr. Finn there?

A. I believe I saw him there.

Q. Did you see Mr. Vette?

A. Yes.

Mr. Miller: On behalf of those for whom I speak I object to that as immaterial. The question here is not whether there was an appearance of a partnership but whether there was an actual partnership. We are not concerned with the doctrine of estoppel on this hearing.

The Court: Overruled.

Mr. Jacobson: Was Mr. Zuncker there?

A. Yes. He was there occasionally.

Q. Mr. Regensteiner?

505 A. I think so.

Q. Do you know a lawyer by the name of Scott Brown?

A. I do.

Q. Did you see him there from time to time in that period?

A. I am quite sure I did.

Q. Do you know Clement Studebaker?

A. No, I do not.

Q. Do you know George A. Studebaker, Junior?

A. No, sir.

Q. Now, did anything happen on June 30, 1917, at the office of Marcuse & Company out of the ordinary?

A. Well, June 30th was the date that the firm, as I understand it, was organized.

Q. Did you see any people there whose names I have mentioned?

A. Yes, I saw quite a few.

Q. Was there a meeting there?

A. There was a meeting in Mr. Marcuse's office, yes.

Q. Was the meeting in the outside office or in the private office?

A. In Mr. Marcuse's private office.

Q. By the way, during the period from June 1st to June 30th were there any signs on the doors or windows?

A. I believe there were. I think there were signs there.

Q. Do you recall what they were?

A. Marcuse & Company, I think.

Q. Were the signs at that time the same as the signs that appeared when the place of business was closed up by the receiver?

A. That is what I was referring to. I think the same sign was on the windows.

Q. I refer to the receiver in this case.

A. Marcuse & Company.

Q. Yes. Now, who was there at that meeting on June 30th, if you remember.

A. I don't remember all the individuals. There was Sydney Stein, Mr. Marcuse, Mr. Morris. I don't think Mr. Vette and Mr. Zuncker were there. I don't recall.

Q. Do you know who was there for them, if any one?

A. I think the gentleman sitting down here (indicating).

Q. Mr. Egbert Robertson?

A. Robertson, I think it is, yes.

506 Q. Who else? Was Mr. Finn there?

A. Mr. Finn was there, yes.

Q. Was Mr. Hecht there?

A. Mr. Hecht was there.

Q. Was Mr. Regenstein there?

A. I don't recall.

Q. Was Mr. Hoffman there?

A. I think he was there. I am not positive.

Q. Was Mr. Louis H. Grollman, a lawyer, there?

A. I am not sure. I couldn't say.

Q. I can't hear you.

A. I couldn't say as to whether he was there or not.

Q. Was Mr. Brown there, Scott Brown?

A. I believe Mr. Scott Brown was there.

Q. I show you what have been offered in evidence here as petitioners' Exhibits 8, 9, 10, 11, 12 and 7 and ask you when is the first time, if at all, that you saw those checks, and where (handing documents to witness)?

A. On a Saturday, I believe, June 30th.

Q. Is your recollection quite clear about that?

A. Yes.

Q. Where did you see them?

A. In the office of Marcuse & Company.

Q. In the private office?

A. Well, I was not in the private office. I was in the office next to that.

Q. Was this where the meeting was going on that you saw those checks?

A. Yes.

Q. To whom were these checks handed, if you know?

A. They were turned over to me at the time.

Q. At that time?

A. Yes.

Q. Now I show you what purports to be a check of the Regensteiner Colortype Company, signed by I. Grollman, Vice-President, and ask you if you saw that check there that day (handing document to witness).

A. I couldn't say as to whether that was there that day.

Mr. Jacobson: It is admitted by counsel for Regensteiner that this check was there at this time?

Mr. Miller: Yes, sir.

Mr. Jacobson: I offer in evidence as Exhibit 17 the check 507 which counsel for the respondents Regensteiner et al. has admitted to have been there on June 30, 1917.

Mr. Miller: Delivered by Mr. Louis Grollman.

Which document was duly received in evidence as Petitioners' Exhibit No. 17, and is in words and figures as follows, to-wit:

Petitioners' Ex. 17.

T. G. H.

Regensteiner Colortype Co.

Chicago, Jan. 30, 1917. No. 19043.

Pay Twenty Eight Thousand Five Hundred Dollars \$28,500.00 to the order of Jos. M. Finn and Frank A. Hecht, Trustees. Regensteiner Colortype Co., I. Grollman, Pres. ———, V. Pres. To the First National Bank of Chicago. 2-1.

Endorsement: Pay Marcuse & Co., Jos. M. Finn, Frank A. Hecht, Trustees Marcuse & Co. Paid through Chicago Clearing house Jul. 3, '17, to the State Bank of Chicago.

Mr. Jacobson: Now after these checks were delivered what did you do, if anything? Put them in your pocket?

A. No. I made up a deposit.

Q. To whose credit?

A. To the credit of Marcuse & Company.

Q. You made up a slip?

A. A deposit slip, yes.

Q. In what bank?

A. State Bank of Chicago.

Q. And when did you go over to the bank with it?

508 A. Well, my recollection was it was June 30th, but it was around noon, it was around twelve o'clock, I think, between the hours of eleven and twelve when the deal was consummated and the checks turned in, and inasmuch as it appears that the

checks were deposited July 2nd it would seem that they were received too late for deposit on Saturday and might have been put through the following Monday. I am not positive about that.

Q. Have you not testified that these checks were deposited Monday, July 2nd, at a previous examination?

A. I may have done that, refreshing my memory from the records.

Mr. Moses: I have here a copy of the deposit slip, if your Honor please, which counsel has agreed with me might be used so I suppose that will cut that short.

Mr. Jacobson: I show you what purports to be a deposit slip for the account of Marcuse & Company and ask you if you know in whose handwriting that is (handing document to witness).

A. It is in the cashier's handwriting.

Q. Who is the cashier?

A. I think Mr. Dzingles.

Q. Who was he cashier for?

A. Marcuse & Company.

Q. Was he cashier at that time?

A. Yes, he was.

Q. Was it made out in your presence on July 2d 1917?

A. Either on—well, July 2d. It bears the date of July 2d.

Q. What checks were noted on this deposit slip, if you know?

A. Studebaker's check.

Q. For how much?

A. Fifty thousand dollars.

Q. Yes.

A. Mr. Marcuse's check, \$60,000. Mr. Vette's check, I think it was for \$30,000, and Mr. Regensteiner's check for, I think it was \$28,500, and Mr. Finn's check for \$31,500.

Q. So that the checks of Peter Zuncker and Frank A. Hecht were not deposited on July 2d, 1917, or prior to that time, were they?

A. No, they were not.

Q. Was the check of Louis Morris deposited on July 2d or prior to that day?

A. No, sir.

Q. Now at the time that the check of Ben Marcuse for
509 \$60,000 was deposited, did you know whether or not he had that much money in the Central Trust Company of Illinois to his name?

A. I didn't know at the time, No.

Q. Have you since discovered that he did not have any such money?

A. Yes, from a reference to his check stubs.

Q. You have had an opportunity to examine the deposits in checks of Ben Marcuse's account in the Central Trust Company of Illinois, in June and July, 1917, have you not?

A. During this hearing, yes.

Q. Now the check I refer to is Petitioners' Exhibit 12. Are you now able to state whether or not Mr. Marcuse, on July 2nd, 1917, had

\$60,000 to his credit in the Central Trust Company of Illinois at the time this check was deposited in the State Bank of Chicago?

A. Well, as I remember, there was an exchange of checks.

Q. Answer my question. Did he the moment, at the time, on Saturday, June 30, 1917, when you state that check was handed to you, do you know whether or not Mr. Marcuse had \$60,000 to his credit in the Central Trust Company?

A. From his records I don't think he did.

Q. Now was there a check deposited, if you know, on July 2d, 1917, to the credit of the Marcuse account, of the Ben Marcuse individual account, in the Central Trust Company of Illinois?

A. Yes, there was.

Q. Do you know whose check that was?

A. Marcuse & Company's check.

Q. It was a check drawn on the account that was started July 2d, 1917?

A. Yes, sir.

Q. Do you know when the check of Louis H. Morris was deposited?

A. I don't know the exact date. Four thousand dollars was deposited during the month of July and two thousand dollars some time later, and an additional two thousand dollars still later, I don't know the exact dates.

Q. Morris's contribution was supposed to be \$10,000?

A. Ten thousand dollars, yes.

Q. When did he deposit—

A. I want to correct that. That check, I believe was \$6,000, the first time it was \$6,000.

Q. When did Morris deposit the first check of \$6,000?

510 A. During the month of July.

Q. Do you know when in July?

A. I don't know. About the middle or latter part of July.

Q. Upon what bank did Morris draw his check for \$6,000?

A. I think it was the Corn Exchange Bank.

Q. Do you remember, was that check good at the time it was drawn?

A. Yes, I believe it was.

Q. And where did you deposit that check, if anywhere?

A. The State Bank.

Q. To the credit of Marcuse & Company?

A. Yes, sir.

Q. Now when did Morris pay the additional \$4,000, if he ever paid it?

A. He paid it at a later date. I think he paid \$2,000 in the month of August and \$2,000 some time later.

Q. Now do you know when the check of Frank A. Hecht for \$25,000 was deposited to the credit of Marcuse & Company?

A. Yes. It was—

Q. When was it?

A. July 31st.

Q. What year?

A. 1917.

Q. At whose request was the check deposited on that day, if you know?

A. Why, at the request of Mr. Marcuse.

Q. Any one else?

A. Not that I know of.

Q. Did you hear any conversation between Mr. Hecht and Mr. Marcuse at any time, with respect to holding up that check?

A. Yes, I did.

Q. When was that?

A. Why, either on that Saturday, June 30th, or the following Monday, July 2nd.

Q. Just a minute please.

A. At the time he gave the check.

Q. Yes.

A. And there was a request made to hold the check up.

Q. Who made the request?

A. Mr. Hecht made the request of Mr. Marcuse.

Q. Do you remember the exact language, as near as you can?

511 A. I don't remember the language. The request was simply to not deposit that check for the time being.

Q. And you did not deposit it?

A. No, and no definite date was set as to——

Q. When did you receive instructions to deposit that check?

A. Received no instructions to deposit it until the end of the month.

Q. From whom, Mr. Hecht?

A. No. Those instructions were from Mr. Marcuse.

Q. Had you also spoken to Mr. Hecht about that check?

A. I had during the month, yes.

Q. You spoke to him several times, did you not during the month?

A. Well, I spoke to him at least once, once or twice.

Q. That was between July 2d and July 31st, 1917, that you spoke to him?

A. Yes.

Q. What was that conversation, if you remember, with respect to this check?

A. Why just as to when the deposit should be made.

Q. What did you say to him?

A. The check was being carried in the drawer, cash drawer of Marcuse & Company.

Q. Did you tell him about it?

A. He understood. I told him so.

Q. What did you say to him?

A. I just asked him when the deposit was to be made.

Q. What did he say to you?

A. I don't remember what he said further than not to make a deposit at that time.

Q. Did he at any time after that change his statement to you with respect to this check?

A. The conversation was not direct with Mr. Hecht. It was generally with Mr. Marcuse in Mr. Hecht's presence.

Q. I understand. Now when you received your instructions on July 31st did you receive those instructions from Mr. Marcuse in Mr. Hecht's presence?

A. I don't remember.

Q. Now these discussions you had with Mr. Hecht, were those with him directly or with Mr. Marcuse in his presence?

A. They were with Mr. Marcuse in Mr. Hecht's presence.

Q. Did Mr. Hecht join in the conversation?

A. Yes, he did.

512 Q. Were these conversations with Mr. Marcuse and Mr. Hecht at the office of Marcuse & Company?

A. Yes, at the office.

Q. I show you the check of Mr. P. M. Zuncker, which is Petitioner's Exhibit No. 9 (showing document to witness). State if you know when this check was deposited to the credit of Marcuse and Company?

A. That check was deposited July 3d, I believe.

Q. And will you state the circumstances under which the check was held up until July 3d?

A. I don't recall the circumstances further than the records showing it was deposited on July 3d. The check is in my own handwriting.

Q. It is in your handwriting?

A. Yes.

Q. Where did you write the check out? Where were you at the time you wrote it?

A. At the office of Marcuse and Company.

Q. Was Mr. Zuncker there?

A. Yes. He must have been there. He signed the check.

Q. It was your purpose to deposit all of the capital that you could get as soon as possible, was it not?

A. Yes, sir.

Q. Do you know how it came that you didn't deposit that check, which is Petitioner's Exhibit No. 9, until July 3rd?

A. Why no, unless there was a request to hold that—to deposit that check the following day.

Mr. Miller: Just a moment now. Wait a moment. He said unless there was a request made. I move to strike that out.

The Court: Strike it out.

Mr. Jacobson: I will bring it out.

Q. Is it your recollection that you would have deposited the check excepting for someone having authority instructing you to the contrary?

Mr. Miller: No. That is argument by the witness, and I object to that.

The Court: Sustained.

Mr. Jacobson: Was there any reason that you know of why this check was not deposited on July 2d?

Mr. Miller: Oh, I object to that unless he brings it home to Peter M. Zuncker.

The Court: Do you remember any reason why that check did not go into the bank until the 3rd of July?

513 A. I don't recall any reason, but the check would undoubtedly have been deposited unless there was a request to hold it up.

Mr. Miller: Well, that I move to strike out. That is argument by a witness, and that is what we are hired for.

The Court: I will let it stand.

Mr. Jacobson: Was there any other deposit made to the credit of Marcuse & Company on July 2d, 1917, other than what is shown in this deposit slip?

A. No. There was none that I know of.

Mr. Jacobson: I offer in evidence as Petitioner's Exhibit 18 the deposit slip.

Mr. Miller: What does that prove?

Mr. Jacobson: I am not trying to make the proof entirely. This connects up, your Honor, the history of these checks.

Mr. Miller: That doesn't prove that any deposit of these checks was made on the 2d of July. On the contrary I hold the checks in my hand, all of which of these that I hold bear the stamp July 3d, showing that they went into the bank——

Mr. Jacobson: Mr. Miller is wrong about the clearance rule.

Mr. Miller: There is nothing to show——

Mr. Jacobson: I offer this deposit slip, your Honor, in evidence.

Mr. Miller: I object to that as not proving anything.

The Court: Does the deposit slip correspond with the amounts of the checks?

Mr. Jacobson: Yes, your Honor. The witness identified six checks or five checks, which were shown on the deposit slip.

Mr. Moses: I understand Mr. Miller's objection is not because we have not the original here?

Mr. Miller: Oh, no.

Mr. Moses: You are willing to accept the duplicate?

Mr. Miller: I am not raising that question.

Mr. Moses: Just the competency of it.

Mr. Miller: The deposit slip doesn't prove anything excepting it was made out on the 2nd of July.

Mr. Jacobson: It helps as fixing the date.

The Court: Is there or not something on the deposit slip which is put there by the bank showing the day the slip is left with the bank?

Mr. Jacobson: Yes, your Honor.

514 Mr. Moses: The bank stamps it the day the deposit is made.

The Court: Is there something here put on it by the bank?

Mr. Jacobson: The date is on it.

The Court: No date on the bank's endorsement?

Mr. Jacobson: This witness has testified that he took those checks over to the bank to deposit, and he told your Honor which checks are represented on that deposit slip.

The Court: It doesn't go to the admissibility of the slip. It goes to the question as to what it proves. The objection is not good by Mr. Miller.

Mr. Miller: I am not raising the question that that is a copy instead of the original.

Mr. Jacobson: May we also have an admission that the copy is made from an original in the possession of the bank, the State bank of Chicago?

Mr. Miller: I am not asking them to produce the original.

The Court: The adversary interest concedes that. I will overrule the objection.

Which document was duly received in evidence as Petitioner's Exhibit 18, and is in words and figures as follows, to-wit:

Petitioners' Ex. 18.

State Bank of Chicago.

Deposited for Account of Marcuse and Co.

Please list each item separately.

July 2, 1917.

Checks on other Chicago banks, and express orders.	Checks on other towns.	Checks on this bank.
1 P. O.—	2	3
28,500		
31,500		
30,000		
50,000		
60,000		
<hr/> 200,000		

New acct. J. O. N. Duplicate. State Bank of Chicago. Henry A. Bese, Auditor.

515 Totals:

Total Checks on this Bank.....	3
Total outside items	2
Total City Items.....	1
Currency .....	..
Gold .....	..
Silver .....	..
Total Deposit .....	..

Mr. Jacobson: Mr. Engstrom, on June 30th, 1917, after these checks were handed to you did Mr. Marcuse give you any instructions with reference to notifying the various stock exchanges?

A. No, he did not.

Q. Sir?

A. No, he did not.

Q. Were you instructed by any one to do so?

A. No. Mr. Marcuse would do that himself, undoubtedly.

Q. Do you know whether or not a notice was sent on or about July 3, 1917, to the New York Stock Exchange?

A. I believe it was.

Q. I show you what purports to be a copy (handing document to witness). Was there a notice sent to the Chicago Stock Exchange on July 3d, 1917?

A. I think all the exchanges were notified.

Q. Do you remember the date?

A. Why it would be about that date, about July 3d or 4th.

The Court: Notified of what?

A. Notified of the opening of business.

Mr. Jacobson: I show counsel what purports to be a copy of such notice and ask them if they will admit that that is a true copy of the notice given to the Chicago Stock Exchange on July 3, 1917.

Mr. Miller: Yes.

Mr. Platt: Yes.

Mr. Jacobson: I offer in evidence as Petitioner's Exhibit 19 the notice referred to by counsel for the respondents.

(Which document was duly received in evidence, marked Petitioner's Exhibit 19, and was and is in words and figures as follows, to wit:)

516

Petitioners' Ex. 19. T. G. H.

The Chicago Stock Exchange.

Office of the Secretary.

Charles T. Atkinson, Secretary.

Copy.

Marcuse & Company, Brokers.

Members New York Stock Exchange, Chicago Stock Exchange.

General Partners, Ben Marcuse, Lew H. Morris; Special Partners, Frank A. Hecht, Jos. M. Finn.

Offices, Ground Floor, Corn Exchange Bank Bldg., Chicago, 122-124-126 South La Salle St.

We beg to announce the formation of a Co-Partnership under the above firm name for the transaction of a general brokerage business

in stocks, bonds, grains, provisions and cotton. Marcuse & Company.

July 3, 1917.

Pet. Ex. 6. 4/3/20.

Mr. Jacobson: I would like to read that to your Honor, if I may.

"Marcuse & Company, Brokers, Members of the New York Stock Exchange and Chicago Stock Exchange, General Partners, Ben Marcuse, Louis H. Morris, special partners, Frank A. Hecht, Joseph M. Finn, office, Ground Floor, Corn Exchange Bank Building, Chicago, 122, 124, 126 South La Salle Street.

"We beg to announce the formation of a co-partnership under the above firm name for the transaction of a general brokerage business in stocks, bonds, grains, provisions and cotton. Marcuse & Company, July 3, 1917."

Q. Was a similar notice, if you know, sent to the New York Stock Exchange and Chicago Board of Trade?

A. May I refer to that, please?

Q. Certainly (handing document to witness).

A. Yes, I think it was.

Q. And on the same day?

517 A. It would be on the same day, yes.

Q. Did you then start doing business as a brokerage house at 122 to 126 South La Salle Street?

A. Yes.

Q. Now was this the principal office of Marcuse & Company, to your knowledge?

A. Principal office?

Q. Yes. At 122 to 126 South La Salle Street, Chicago, Illinois.

A. Why, it was the only office.

Q. The only office of Marcuse & Company?

A. Yes, sir.

Q. And you were the house manager?

A. Office manager, yes.

Q. Now there was an item of thirteen thousand and some odd hundred dollars. Do you know what that referred to?

A. Yes.

Q. What?

A. There was an amount paid Mr. Marcuse on the formation of the business.

Q. What was that?

A. An amount paid Mr. Marcuse on the formation of the business to cover the expenses and the cost of the fixtures, as I understand it.

Q. Now when was that paid to Marcuse?

A. On July 2nd.

Q. Was that paid to him personally?

A. Yes. It was paid to Ben Marcuse.

Q. How was it paid?

A. By check.

Q. By check on whose account?

A. On the firm's account.

Q. From the account of Marcuse & Company?

A. Yes, sir.

Q. To reimburse Marcuse for what?

A. For expenses advanced.

Q. Advanced by whom?

A. By Ben Marcuse.

Q. What were those expenses?

A. The expenses were—they were to cover the cost of furniture and fixtures.

Q. Yes.

A. And incidental expenses during the current month or two prior to the formation of the business.

518 Q. Was it to cover the cost of the fixtures that you found in the office of Marcuse & Company when you got there June 1st?

A. Yes, they were.

Q. Were those the same fixtures that had been used by von Frantzius & Company in its brokerage business?

A. They were.

Q. Was it also to cover the rent between April 2d 1917 and July 2d, 1917?

A. Yes. It was to cover the rent and various salaries, ticker service.

Q. And the salaries of various employees who were there in the interim?

A. Yes.

Q. Now did these other people whom you have mentioned as being present or represented, did they know about this item being taken out of the account?

Mr. Miller: How can they testify to what we knew?

A. I don't know.

The Court: Sustained.

Mr. Jacobson: Was there anything said at any time by Mr. Marcuse to any of the persons whose names you have given us with reference to this item?

Mr. Miller: In your presence.

A. I don't know.

Mr. Jacobson: Was there any explanation made in your hearing to anybody else with reference to this item of thirteen thousand and some odd dollars?

A. Not in my hearing, no.

Q. Did you discuss it with Mr. Hecht yourself?

A. Not that I remember.

Q. Did you discuss it with anybody else excepting Mr. Marcuse?

A. No, no one but Mr. Marcuse.

Q. Did you—do you know whether those persons ever found out or were informed with reference to this item of thirteen thousand dollars?

Mr. Miller: How can he answer that?

Mr. Jacobson: He can answer yes or no. It is merely a preliminary question.

The Court: What do you know about it?

A. I don't know.

The Court: He doesn't know.

Mr. Jacobson: Did that item appear in the audit of receipts and disbursements, if you know.

519 A. It did.

Q. That was furnished to Hecht and Finn.

A. Fully accounted for.

Q. It was accounted for?

A. Yes, sir.

Mr. Jacobson: Has any one here the audit that was furnished to Hecht and Finn in the year 1917 or 1918?

Mr. Platt: I haven't it here.

Mr. Jacobson: Will you concede, Mr. Platt, that the item appeared in that audit?

Mr. Platt: Why I don't know anything about it.

The Witness: The item was fully accounted for.

Mr. Jacobson: Do you recall now in the absence of the audit just what was said about that item in that audit?

A. Why it was simply itemized, so much for expenses and so much for furniture and fixtures.

Q. Did it state the period that these expenses covered?

A. I don't know. I couldn't say.

Q. Was it charged as part of the expenses of the operation of that business?

A. No. It was charged as expense prior to the formation of the company.

Q. And was that audit or a duplicate copy thereof furnished to Mr. Hecht?

A. Why, I believe so.

Q. Well, don't you know?

A. I don't know.

Q. Was it furnished to Mr. Finn?

A. I don't know.

Q. Do you know whether or not such an audit was prepared by anybody?

A. Yes, sir, it was.

Q. Who prepared that audit?

A. C. A. Macdonald.

Q. Didn't you discuss that item with Mr. Hecht after it appeared in the audit?

A. No, because I didn't turn the audit over to Mr. Hecht.

Q. Who turned it over?

A. Why, Mr. Marcuse, I believe.

Q. To whom?

A. He received the copies and I presume he gave them to Mr. Hecht and Mr. Finn.

Q. Now you saw Hecht at the place of business of Marcuse & Company after July 2d, 1917, did you not?

520 A. Yes, I did.

Q. Did you see him there frequently?

A. Quite frequently.

Q. How frequently?

A. Why, every day as near as I recall when he was in town.

Q. Every day when he was in town. What time in the morning did he show up?

A. Oh, at different times, probably nine or ten o'clock.

Q. And how long would he generally stay?

A. He would generally stay, well, as I remember he would generally have lunch there, send out for a sandwich.

Q. Whom did he send out for lunch, one of the employees?

A. He would send the porter out.

Q. Yes.

A. He would stay there probably till one o'clock, twelve or one, maybe two.

Q. Now during the time that he was there was he just sitting still or was he talking or acting in some way?

A. Well, he would do both. He would generally talk.

Q. Discuss matters with you from time to time?

A. Yes, he would discuss them.

Q. What would he discuss with you?

A. Just things in general, market conditions principally.

Q. What else?

A. I don't recall anything particularly.

Q. The sales the previous day?

A. Sometimes.

Q. Discuss whether business was brisk or otherwise?

A. Yes. He would ask about business.

Q. And you were the man to seek that information from, were you not, you were the office manager there?

A. Well, not necessarily, but I would know about it.

Q. You knew all about that?

A. Yes.

Q. What other items of information did he inquire of from you, if you remember?

A. Why, principally about the volume of the business.

Q. And when he was not talking to you what was he doing?

A. Why, he would be talking to Mr. Marcuse, or possibly to customers.

Q. Yes. Was he in the customers' room, too, at different times?

521 A. He was either in the private office or in the customers' room.

Q. Now when he was in the customers' room, did you see him talk to customers in the customers' room from time to time?

A. I would often see him talk to customers, yes.

Q. When he was in the private room and not talking to Mr. Marcuse whom was he talking to?

A. Generally he would be talking to some of the customers in the private room.

Q. Now did orders issue from that private room for the purpose of buying or selling stock from time to time while Mr. Hecht was in there?

A. Yes, certainly.

Q. And to whom were those orders given, if you know?

A. Why they were given to possibly either Mr. Marcuse, sometimes to myself or perhaps a solicitor.

Q. Were the orders that issued from this private room, were they always orders from Mr. Hecht, or were they from others or in the names of others that were present in that room?

A. They might be from anybody in that room.

Q. Was it a frequent occurrence for this private room to have Mr. Hecht and customers in there?

A. Yes, it was.

Q. How frequently during the week while Mr. Hecht was in the city would that occur?

A. It might occur daily. I might explain that. What I refer to as the private office was really the customers' private office.

Q. Did Mr. Hecht take part in the discussion between these customers?

A. Why yes he did.

Q. Joined in the conversation?

A. Yes.

Q. Who were some of the customers who were in this private room with Hecht?

A. I don't recall.

The Court: You mean who were some of the customers in the private room with Hecht?

Mr. Jacobson: With Hecht, your Honor, yes, sir.

A. Various people.

Q. Do you know Mr. Koepfer?

A. Yes, I do.

522 Q. Was he one of those customers that was in the private office?

A. Yes, he was often there.

Q. Do you know his first name?

A. I think it is Louis Koepfer.

Q. Do you know Mr. Kirsheimer?

A. I do.

Q. Was he a frequent visitor at that private office?

A. He was there often.

Q. Do you know his first name?

A. I do not, no.

Q. Is he the Kirsheimer that died recently?

A. I couldn't answer that.

Q. Do you know Mr. Alexander?

A. Yes, I do.

Q. Did you see him there?

A. I don't think so, not in the private office.

Q. Did you see Mr. Hecht discuss matters with Mr. Alexander, W. E. Alexander?

A. He did in the customers' room.

Q. Wasn't Mr. Jahneke a member of that private office conference?

A. Yes, he was in there.

Q. Do you know Mr. Keevers?

A. Yes, I do.

Q. Was he one of those generally in that private office?

A. He was there quite often.

Q. Did Mr. Hecht transact any of his own business in that office that you saw other than business or brokerage, buying or selling of stock?

A. Why, he may have.

Q. Did he promote some oil syndicate or proposition that he was concerned in in that office?

A. I think he possibly did.

Q. Do you know the name of that oil syndicate or proposition or enterprise?

A. I think there was one called the Acado Oil and Land Association, something like that.

The Court: What is the name?

A. Acado.

Mr. Jacobson: Was Mr. Zuncker a member of that land association?

A. Who?

Q. Zuncker?

A. I couldn't say.

523 Q. Do you know whether or not he subscribed \$500 as a flier to that?

A. I don't know.

Q. You don't know. Did Mr. Hecht discuss with you from time to time the personnel of the salesmen or solicitors on the floor?

A. He would discuss it occasionally.

Q. Now what would he say about it, if anything, that you now recall?

A. Oh, he might speak highly of some particular solicitor and—

Q. And?

A. And find fault with some other.

Q. You say he might. Give us the instance that you now recall whether he did or he didn't, one way or the other.

A. He simply mentioned that he liked a particular man on the floor and didn't like the personality of somebody else.

Q. Did he also make his objections to Mr. Marcuse?

A. I presume he did, yes.

Q. Do you know that he did or didn't?

A. I overheard him, yes.

Q. You did overhear him make those objections? Then were the changes made in the personnel as the result of that kind of objection, if you can call it that?

Mr. Platt: Whether any changes were made as the result or not, I presume would be a matter of conjecture.

Mr. Jacobson: I withdraw that question.

A. Yes. I think so.

Q. Did you see him do anything else other than what you have already told us?

A. Well, I don't quite understand your question.

Q. Did you see Mr. Frank Hecht do anything else other than what you have already told us, in that office of Marcuse & Company?

A. That is a broad question.

Q. Well, is there anything else that you now recall that you haven't stated before?

A. Well, discuss the business in general. That is all I can recall.

Q. Do you recall the board markers or employees of the office?

A. Yes, I do.

Q. Do you know whether anything happened with respect to them or the way the boards were marked? Or ever discussing it with Mr. Hecht?

524 A. Well, I remember on one occasion overhearing Mr. Hecht object to the customers crowding around the ticker.

Q. What did he say?

A. I didn't hear him. I heard about this.

Q. And did something happen after that?

A. Well, I understand there was a sign put on the ticker requesting customers not to crowd around the place.

Q. You saw the sign go up on the ticker?

A. Yes.

Q. And do you know who ordered that sign put up?

A. I don't know. It is possible I did so myself. I don't think so. I don't remember. The board marker told me about it.

Q. Who was the board marker?

A. I guess it was a man named Salina.

Q. He is here in court now, is he not?

A. I don't know if he is here.

Q. Mr. Engstrom, did you see Mr. Hecht stay after the general business hours from time to time?

A. At the office?

Q. Yes.

A. Yes. He would occasionally be in the office in the evening.

Q. Until how late?

A. Probably five o'clock.

Q. Have his machine call for him there?

A. Quite frequently, yes.

Q. Received his telephone messages there?

A. Yes.

Q. Give orders to the order clerk to buy stock?

A. Yes, he did.

Q. This happened during the period between July 2d, 1917, and March 12, 1920?

A. Yes, sir.

Q. More than once?

A. Oh, yes.

Q. Continuously, Mr. Engstrom?

A. Yes.

Q. Now did you see Mr. Zuncker in the office?

A. Yes, I saw him in the office.

Q. Was he there frequently?

A. No, I wouldn't say he was there frequently.

Q. Did he carry quite an account? Did he have a number of trades?

A. Yes, he did.

525 Q. Did he have trades in any other name excepting his own, if you know?

A. No, he did not, that I know of.

Q. Do you know Mr. Vette?

A. Yes, I do.

Q. Have you seen Mr. Hecht, Mr. Zuncker and Mr. Vette from time to time discuss business in the office of Marcuse & Company?

A. I don't believe so. I have seen Mr. Hecht and Mr. Vette.

Q. This is Mr. Henry Vette who is here in court?

A. Yes.

Q. Now how many audits were made of the books of Marcuse & Company between July 2d, 1917 and March 12, 1920, if you know?

A. I think there were three.

Q. Who made the first audit?

A. Macdonald & Company.

Q. Macdonald & Company?

A. Macdonald & Company.

Q. Do you remember the date of that?

A. I believe it was September, 1917.

Q. Is that the same Macdonald who was the executor for the Von Frantzius estate?

A. It was.

Q. Was that Charles A. Macdonald?

A. Charles A. Macdonald.

Q. Now after this audit of 1917 state whether or not a so-called dividend was declared by Marcuse & Company if you know.

A. Why there was a dividend declared at the end of June and December each year.

Q. You say that—

A. The first dividend was paid in December of 1917.

Q. And how much was that dividend?

A. I don't recall—six per cent on the capital.

Q. Six per cent on the capital?

A. Yes.

Q. Do you mean to state Hecht & Finn received a sum equal to six per cent on \$190,000?

A. For the period of six months.

Q. Sir?

A. For the period of six months.

Q. You mean at the rate of six per cent?

526 A. Yes, per annum.

Q. So that they received at that time a dividend of three per cent?

A. Yes.

Q. Now in June, 1918, was a similar dividend declared?

A. Why, yes, it was.

Q. Do you know the rate or per cent?

A. The same rate.

Q. Three per cent?

A. Three per cent, yes.

Q. What was the next dividend paid, if you know?

A. The following December.

Q. That is in December, 1918?

A. Yes, sir.

Q. Do you remember the amount of that dividend?

A. The same rate, and I believe there was an additional four per cent for the full year paid. I am not positive.

Q. And when was the next dividend declared?

A. The following June.

Q. That is June, 1919?

A. Yes.

Q. And the amount of it?

A. Three per cent.

Mr. Platt: Those payments were fifty-seven hundred dollars each.

Mr. Jacobson: We have agreed, I understood, this morning, to produce a tabulation. I merely want to get the per cent.

Mr. Platt: The only tabulation I have is the pencil memorandum that my client handed me which shows fifty-seven hundred dollars paid December 1, 1917, just got it from the Title & Trust Company, if your Honor please; fifty-seven hundred dollars June 30, 1918, fifty-seven hundred dollars December 30, 1918, and seventy-six hundred dollars at the same time, one being a regular three per cent and the other four per cent; fifty-seven hundred dollars paid June 30, 1919, and thirteen thousand three hundred dollars paid December 30, 1919.

Mr. Jacobson: Do counsel representing the other respondents agree that those figures are correct?

Mr. Miller: Yes, if Mr. Platt says they are.

Mr. Platt: There are figures taken off the books of the Title & Trust Company.

Mr. Jacobson: Will counsel for respondents admit now that these sums were paid to the Title & Trust Company and by them distributed pro rata among trust certificate holders?

527 Mr. Miller: In proportion to the shares that each man had as evidenced by the certificates he held.

Mr. Jacobson: How were these payments made, by check or cash?

A. By check.

Mr. Miller: Counsel's question implies that George M. Studebaker and Clement Studebaker Junior got a portion of those dividends. That I do not admit. Those two individuals got none of the dividends.

Mr. Buckingham: Just the holders of trust certificates.

Mr. Miller: Hoffman got none, but the dividends paid on the so-called Hoffman certificates were received by the Studebaker Brothers' Trust.

Mr. Jacobson: You say they were paid by check?

A. By Check.

Q. On the account of Marcuse & Company?

A. They were paid by check to the Chicago Title & Trust Company.

Q. At whose request were these checks made payable to the Chicago Title and Trust Company, if you know?

A. At the request of Mr. Marcuse.

Q. Who made the second audit, if you know?

A. I think Lundelius made that.

Q. Do you remember when that was?

A. 1918. I believe it was September.

Q. And who made the third audit?

A. The Federal Accounting Company.

Q. When was that?

A. December 1919.

Q. Did any one to your knowledge criticize the form or manner of having made this audit or any of these audits at any time?

A. Yes, they did.

Q. Who criticized it?

A. I understand that Scott Brown criticized the manner of the audit.

Mr. Miller: Just a moment. I move to strike that out; his understanding.

The Court: Strike it out.

Mr. Jacobson:

Q. Did you hear that there was criticism with respect to the audit? Yes or no.

A. I heard so.

Q. And with respect to which audit did you hear this criticism?

528 A. Why, to the audit before the last.

Q. You mean the audit made by Lundelius & Company, September, 1918?

A. Yes, sir.

Q. And what was the criticism you heard directed to that audit?

Mr. Miller: I object to that as immaterial, unless brought home to somebody whom we represent

Mr. Jacobson: If I do not connect it, it may be stricken out.

Mr. Miller: Tell us how you propose to connect it.

Mr. Jacobson: I do not have to.

The Court: This is mere gossip.

Mr. Jacobson: I understand. I will first endeavor to prove the criticism, and then I will endeavor to make my connection by some other witness, after I get through with this witness.

The Court: The other witness, if he can supplement it, according to the rules of evidence he can also tell us what the criticism was.

Mr. Jacobson: Is Mr. Scott Brown here?

Mr. Miller: I do not know whether he is or not.

Mr. Jacobson:

Q. Do you know to whom Scott Brown made any criticism?

Mr. Miller: I object to that as assuming Scott Brown made criticism to somebody.

The Court:

Q. Did you hear him say anything on the subject?

Mr. Jacobson:

Q. Did you hear him say anything to anybody else?

A. No, sir.

Q. Did you hear he had said it?

Mr. Miller: That is gossip. I object to it.

Mr. Jacobson: These gentlemen are trying to have me put all my witnesses on that subject on at once.

The Court: You do not get anywhere if Brown is the man who made the criticism, and this witness heard from Smith that Brown had criticized. You must bring Brown in to make this competent. To make this competent, Brown has to go over and tell what the criticism was.

Mr. Jacobson: In order to find out about Brown having made criticism I would like to find out to whom it was made, and bring that other person.

The Court: He doesn't know.

529 Mr. Jacobson: That is the very question I want to ask this witness.

Mr. Miller: But this statement was made to somebody else and it is hearsay, unless he heard it made.

Mr. Jacobson: I understand. Until it is connected up it will not be considered as competent evidence.

Mr. Miller: I object to it as hearsay.

The Court: Put your question.

Mr. Jacobson:

Q. To whom did you hear Brown had made such a criticism, if any?

Mr. Miller: I object to that as calling for hearsay.

The Court:

Q. Mr. Witness, did somebody criticize this audit to you?

A. No, sir.

Q. Did you hear somebody criticize the audit to somebody else?

A. No, sir.

Q. Is it only that you heard from somebody that somebody else had criticized it?

A. Yes, sir.

The Court: That doesn't get you anywhere.

Mr. Jacobson:

Q. Was the audit changed after you heard gossip of that kind or talk of that kind?

Mr. Miller: Objected to as immaterial.

The Court:

Q. Was there a change at any time in that audit after it was first made?

A. The audit made in different form, you mean?

Q. Anything, any change made in it?

A. No, not that I remember.

Q. Either as to form or substance?

A. No, sir.

Mr. Jacobson:

Q. Did you see Scott Brown in the office of Marcuse & Company at or shortly after this audit of Londelius was prepared?

A. I may have seen him in the office. I didn't discuss anything with Scott Brown.

Q. Did you see him discuss matters with Mr. Marcuse?

A. Why, he always dealt with Mr. Marcuse. I didn't overhear anything he said.

Q. This audit of Londelius & Company was made up how, if you know?

A. Why, it was a general audit, but it omitted——

Mr. Miller: Isn't the audit the best evidence as to how it was made up?

530 Mr. Johnson: No.

The Court: It is the best evidence of what it contains, but this witness——

Q. Are you familiar, do you understand what an audit is, what it means, what the various entries in the audit mean?

A. Yes, your Honor.

Q. Go ahead.

A. It omitted the list of securities or securities balance.

Mr. Jacobson:

Q. Yes. What else did it omit?

A. Why, as I understand, it was a general audit.

Q. Did it omit the transactions in an account known as Account Number 10?

A. Yes, it did.

Q. Did it omit the transactions in another account known as Account Number 5?

A. I wouldn't say it omitted the transactions, but they were not specified.

The Court: Is this audit available?

Mr. Jacobson: I do not know. I am going to try to find it, and if I can find it will produce it.

The Witness: They were not specified.

The Court: We can save time by producing the audit.

Mr. Jacobson:

Q. You say it wasn't specified?

A. It wasn't specified in the audit.

Q. Yes. Did you see Mr. Regensteiner in the office of Marcuse & Company?

A. Yes, I did.

Q. From time to time?

A. Occasionally.

Q. What was he doing there, if you know?

A. Why, just drop in for possibly 15 minutes or half an hour or so.

Q. Do any trading there?

A. Yes, he traded.

Q. What else besides giving orders to buy or sell did you see Mr. Regensteiner do?

A. Why, nothing that I know of. He wasn't there very—He wasn't there frequently.

Q. Did you ever see Mr. Richard Yates Hoffman?

A. I don't remember seeing him in the office.

Q. This Mr. Henry T. Sanford, whose name appears on the original of this certificate, which has been offered in evidence as Petitioners' Exhibit 5, was he an employe of Marcuse & Company?

A. Yes, he was.

Mr. Jacobson: That is all.

Mr. Moses: May I ask a few questions, if your Honor please?

Examination by Mr. Moses:

Q. Referring to your statement in the earlier part of your examination of the request made by Mr. Hecht to Mr. Marcuse in your presence that the check be not used for the time being—what did Mr. Marcuse say in reply to that request?

A. Why, I do not remember the words. He agreed to hold the check. He issued instructions to me not to deposit that check and to hold it up.

Q. He told you not to deposit the check?

A. The words were simply to hold the check.

Q. When you, in that interval of time between the time of that 30th day of June and the 31st day of July, talked to Mr. Marcuse in Mr. Hecht's presence about depositing that check, what did Mr. Marcuse reply to you upon those occasions?

A. Why, he requested me not to deposit the check. He wasn't ready, and Hecht preferred to have it held up; wanted to have it held up.

Q. What did Mr. Hecht say to you as the reason, if any, why he didn't want you to have that check deposited?

A. Why, my recollection is that—I am not positive of this statement, but my recollection is that there was some real estate deal of some kind he had on, and he wanted the check held up.

Mr. Moses: Now, I desire to offer in evidence, if your Honor please, the transcript of the Frank A. Hecht deposit account with the Continental and Commercial National Bank showing the balance on hand on the 29th day of June of \$896.05, the balance on June 30th of \$729.80, the balance on July 3rd of \$896.05. The only deposit being made on those days being that of July 3rd of \$166.25. I have asked counsel to agree—

Mr. Platt: I have stated that we have no objection to the admission of this, and we are willing to agree that the facts are there, but I understand Mr. Moses will agree that the relations between Mr.

Hecht and the bank are such that his check would have been
532 paid if presented, the check of \$25,000, without regard to the state of his account. That is the fact.

Mr. Moses: I think I will agree to that as the fact, if your Honor please. That is, that if some one were here from the Bank they would testify to the fact that his check, if presented, would have been honored.

I also have here a duplicate deposit slip of the State Bank of Chicago for the account of Marcuse & Company under date of July 3rd, 1907, which I would like to offer in evidence, showing only two deposits, one of \$6,000 and the other of \$25,000, P. M. Zuncker.

I will ask to have the statement marked Petitioners' Exhibit 20, the Frank A. Hecht statement, and the deposit slip marked Petitioners' Exhibit 21.

(Whereupon said documents were received in evidence, marked Petitioners' Exhibit 20 and 21, respectively, and were and are in words and figures as follows, to-wit:

Petitioners' Ex. No. 20.

Please forward report promptly to the Auditor.
— vouchers returned. — Clerk. IGH.

F. A. Hecht, in Account with Continental and Commercial National Bank of Chicago.

Please examine upon receipt.
If no error is reported within ten days the account will be considered correct.

For the Month of June 29th to July 3rd, 1917, Inc.

Date.	Checks.	Date.	Total checks.	Deposits.	Balance.
		6/29/17	Balance bro't forward . . .		89,605
1. 6/30/17	16,625	30	16,625		72,980
2.		7/3/17		16,625	89,605
3.					
4.					
5-50.					

Duplicate.

930. Date. Checks. Date. Total checks. Deposits. Balance.
201-260.

533 **Petitioners' Ex. 21. I. G. H.**

State Bank of Chicago.

Deposited for Account of Marcuse and Co.

July 3, 1917.

Please list each item separately.

Checks on other Chicago banks, P. O., and express orders.	Checks on other towns.	Checks on this bank.
1	2	3
6,000	✓	
25,000	✓	
Total Checks on this Bank.....		3
Total Checks on other Towns.....		2
Total City Items.....		1
Currency		
Gold		
Silver		
Total Deposit.....		

Mr. Moses: I also have a duplicate deposit slip of the State Bank of Chicago, for the account of Marcuse & Company, dated July 31, 1917, showing a deposit of \$25,000, the only city item. That corresponds with the date of the deposit of the check of Frank A. Hecht. I ask to have that marked.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 22, and was and is in words and figures as follows, to wit:)

534

Petitioners' Ex. 22. I. G. H.

State Bank of Chicago.

Deposited for Account of Marcuse & Co.

July 31, 1917.

Please list each item separately.

Checks on other Chicago banks, P. O., and express orders.	Checks on other towns.	Checks on this bank.	
1	2	3	
Duplicate Cj.			
Total Checks on this Bank.....		3	
Total Checks on other Towns.....		2	
Total City Items.....		1	25,000
Currency
Gold
Silver
Total Deposit			25,000

Mr. Moses:

Q. Now, on that last occasion just before the deposit by you of the \$25,000 check of Mr. Hecht's what did you say to Mr. Marcuse in Mr. Hecht's presence as to that check?

A. Why, I simply informed him that it would be necessary to deposit that check on that day, the 1st day of July, in order to show it in the current month's business. It couldn't very well be carried over on account of closing the books.

Q. And what did he say in reply to you?

A. I don't recollect whether Mr. Hecht was present on that day or not, but I was instructed then to put the check through.

Mr. Moses: I also desire to offer in evidence, if your Honor please, a bank statement of Foreman Brothers' Banking Company, for the account of P. M. Zuncker, 220 North Green Street, for the dates of June 30th, showing a balance on that date of \$4,161.61, June 30th a balance of \$304.50, June 3rd, a balance of—

The Court: July 3rd.

Mr. Moses: Well, June 3rd, a balance of \$5.00; June 3rd,
536 a balance of \$9,908.34; July 2nd, a balance of \$9,908.34
and July 2nd again, a balance of \$15,250.

Just withdraw that please. Withdraw the whole statement. I
will just offer the sheet for what it represents. Counsel apparently
has some different information from what I have on this subject, if
your Honor please, and I will withdraw this for the time being
until we can get the correct statement. This was furnished me by
Mr. Shannon. I will withdraw this for the time being.

Q. Who, if anybody, had the keys to the office of Marcuse & Com-
pany?

A. Probably——

Q. Do you know?

A. —eight or ten of the employes had the keys.

Q. Do you know whether Mr. Hecht had a key?

A. I do not believe he had a key.

Q. Do you know whether Mr. Finn had a key?

A. I am quite sure he did.

Mr. Moses: That is all.

Cross-examination by Mr. Miller:

Q. Mr. Engstrom, did Marcuse & Company open its bank ac-
count on the 2nd of July, 1917?

A. Yes, it did.

Q. Was that the first bank account that Marcuse & Company
opened?

A. It was.

Q. Did Marcuse & Company open its set of books on the 2nd of
July, 1917?

A. I think the set of books was opened June 30th.

Q. June 30th?

A. 1917.

Q. Was that the first set of books opened by Marcuse & Com-
pany?

A. Yes, it was.

Q. Did Marcuse & Company begin trading on July 2, 1917?

A. You mean did they open their business July 2nd?

Q. Yes, did they begin? Did they open their business on that
day?

A. Yes, they did.

Q. Had Marcuse & Company done any trading before that date?
Marcuse & Company?

A. No, they had not.

536 Q. You have testified to the fact that after the firm of
Marcuse & Company was organized that firm paid to Mr.
Marcuse, or repaid to Mr. Marcuse, an item of some thirteen thou-
sand dollars, wasn't it?

A. Yes, sir.

Q. Was that money which Marcuse had himself personally expended on account of his rent, salary, and other items which went to make it up, prior to the organization of his partnership firm?

A. Yes, sir.

Q. And did the partnership firm of Marcuse & Company get the benefit of—strike that out.

Mr. Jacobson: I insist the question stand, your Honor.

Mr. Miller: That is a new one. He can frame questions for me!

The Court: It is his. He can withdraw it.

Mr. Jacobson: We will adopt that question.

Mr. Miller: I am going to frame another one.

Q. The firm of Marcuse & Company repaid to Marcuse the individual, those expenditures, did they?

A. They did.

Q. After the organization of Marcuse & Company, and after that firm began business, Peter M. Zuncker traded through the firm, didn't he? He had an account there?

A. Yes, he did.

Q. Bought a lot of stock?

A. He did.

Q. The same was true of Henry Vette?

A. Yes, sir.

Q. And the same was true of Scott Brown, wasn't it?

A. You refer to Scott Brown or Studebaker Brothers?

Mr. Ringer: We do not get that answer. Will you raise your voice a little bit, young man.

The Witness: Do you refer to Scott Brown or Studebaker Brothers?

Mr. Miller: Well, did Scott Brown or Studebaker Brothers have any trading with Marcuse & Company?

A. Yes, he did; Studebaker Brothers.

Q. And that brought Scott Brown into the office of Marcuse & Company occasionally, did it?

A. Yes, it did.

Mr. Jacobson: That answer isn't clear. Does the witness mean Studebaker Brothers or Studebaker Brothers' Trust? I would like to have the witness state just what he means.

537 The Witness: I mean both.

Mr. Miller:

Q. Mr. Regensteiner also traded through the firm?

A. He did.

Q. And that brought him into the office occasionally?

A. Yes, it did.

Mr. Miller: That is all.

Mr. Platt: A few questions.

Mr. Burry: May I interrogate him?

The Court: On which side of this question are you, Mr. Burry?

Mr. Burry: This side.

The Court: Wait for the redirect. This is cross.

Examination by Mr. Platt:

Q. Mr. Engstrom, Mr. Hecht, Frank A. Hecht, Senior, was a pretty active trader, was he not?

A. He was a fairly active trader.

Q. And Mr. Frank Fair, and other near relatives of Mr. Hecht, or connections, were also active traders through Marcuse & Company, were they not?

A. They were.

Q. And they all showed a very lively interest in the fluctuations of the stock in which they were interested, did they not?

A. I presume so.

Q. Now, take the time you said that there was a request that that check should be delayed pending some deal or other: Mr. Frank Hecht already had placed on deposit with Marcuse & Company a large number of valuable securities, had he not, in his trading account?

A. I think he had. I do not know the amount.

Q. Do you remember the amount that was placed there on the 2nd of July?

A. I do not know the amount.

Q. It was a very considerable amount in value of securities, wasn't it?

A. I think it was.

Q. Now, when you spoke of Mr. Hecht in the customers' room and talking with customers, the subject of their conversation was the fluctuation on that quotation board, was it not, mainly?

A. Yes, principally.

538 Q. And the general outlook of market conditions and swapping back and forth the gossip one hears in a broker's office? That is correct, isn't it?

A. Yes.

Q. You have had other customers complain about the manner of your clerks and employees, either with or without reason, have you not occasionally?

A. Yes, I have.

Q. And if you thought the reasons were good you would discipline the clerk, and if you didn't think they were good you didn't, is that right, as these complaints were made?

A. Yes, sir.

Q. Now, so far as you knew Mr. Frank A. Hecht didn't have any down town office? That is correct, isn't it?

A. I don't know whether he had one or not.

Q. Well, you knew where Mr. Scott Brown's office was, did you not?

A. I did.

Q. You knew where Mr. Regensteiner's office was, did you not?

A. Yes, I did.

Q. But you say you do not know whether Mr. Frank Hecht had any downtown office or not?

A. I don't know. I never had any occasion—I was never over there.

Q. Now, you don't mean to say that Mr. Hecht was continuously in the Marcuse office or was continuously carrying on any business transactions there, do you? You used the word "continuously." It was used in a question and you assented to it. Do you understand that was the question?

A. I said as near as I remembered he was there almost daily.

Q. In there?

A. Frequently.

Q. Frequently. And giving very frequent orders, was he not, for buying or selling on his trading account?

A. Yes, he was.

Q. Now, you have spoken of some things being omitted from the audit. That was an audit that was being sent to Mr. Hecht and Mr. Finn, as you understood it?

A. Yes, I presume they were.

Q. And your understanding was that the purpose of omitting the details of that was so that they wouldn't be informed of those details, was it not?

539 A. I presume that was the reason.

Mr. Jacobson: I object. That calls for a conclusion, your Honor. If he knows, I don't object.

The Court: Well, I suppose that any place except a court that would follow as a matter of course; that the audit was got up for them and left out.

Mr. Platt: I want to have it made clear by the witness that we were not parties in any way to that question. That is all.

Examination by Mr. Burry:

Q. What was the name of the account of the Marcuse house during June—the bank account?

Mr. Miller: May I inquire whom Mr. Burry represents in this matter?

Mr. Platt: Mr. Peters, Mr. Burry's partner, stated he represented various creditors in the matter.

Mr. Burry: Quite a lot of them.

Mr. Miller. All right. Your Honor, I think I want to make this point: I do not understand that Mr. Burry represents any of the creditors who filed this amended petition which we have answered, and under which the issue is raised that we are now trying, and I do not understand that anybody has a right to come in, simply because he may represent some creditors that may ultimately be interested in this lawsuit, and take part in this trial.

Mr. Burry: We have an appearance on file here.

The Court: Have you an appearance here making your clients parties to the question?

Mr. Peters: We have entered an appearance, and asked that the usual rule be served upon them, and have filed intervening petitions on behalf of a number of clients.

Mr. Miller: But they do not represent any of the creditors who joined in the petition which we have answered and which is now—and under which the hearing is now going on.

The Court: Have you filed for your clients an intervention under the other petitioning creditors' petition?

Mr. Peters: We have not filed an intervening petition for adjudication of bankruptcy, no.

Mr. Miller: I do not understand that that opens the door for anybody to take part in the trial.

The Court: I am inclined to think that is good.

540 Mr. Burry: I understand in a bankruptcy proceeding any person who appears as a creditor immediately has rights in the trial of the matter, so much so, for instance, that all the petitioning creditors together cannot dismiss the petition. Having once started the proceeding in the bankruptcy court, there is a provision made that before it can be dismissed notice to all known creditors must be given. We, however, have actually appeared in the case with an intervening petition on behalf of creditors. We are in this case, in this bankrupt case.

The Court: Well, you may examine the witness.

Mr. Burry: I only have a few questions.

The Court: Yes. Your appearance in the case on behalf of creditors gives you a standing to examine the witness. You have that interest in the outcome of the issue.

Mr. Miller: But he represents nobody that makes any charge against us. His client has not made any charge against us. His client has not said we are partners or insolvent.

The Court: Go ahead.

A. The State Bank of Chicago.

The Court: The question is whether or not Marcuse & Company had any bank account anywhere in any name in June 1917.

The Witness: The State Bank—they had no account. I will correct that answer. They had no bank account.

Mr. Burry:

Q. In what name was the bank account kept connected with the office?

A. In the name of Ben Marcuse.

Q. Until when did that continue?

A. Why, the firm of Marcuse & Company started their bank account July 2, 1917.

Q. You have told us, however, that the name "Marcuse & Company" appeared upon the door and windows of the office all during June after you came there, did you not?

A. I said it was my impression that the name appeared on the window and door in the month of June.

Q. And was not the account of that brokerage house run in the name of Marcuse & Company during June?

A. Business was not conducted in the office of Marcuse & Company during the month of June.

Q. Was the bank account run in the name of Marcuse & Company during that month?

A. There was no bank account, outside of Marcuse's personal bank account. Marcuse & Company did no business during the month of June.

Q. Was there a new bank account issued when these checks were deposited?

A. There was.

Q. On June 30th?

A. The first bank account; State Bank of Chicago.

Q. A new bank account opened then?

A. Yes.

Mr. Burry: That is all.

The Court: The deposit of those checks opened that account?

A. It did.

Redirect examination by Mr. Jacobson:

Q. Counsel asked you if Marcuse & Company got the benefit of this \$13,000—

Mr. Miller: No, I didn't.

Mr. Jacobson:

Q. —and then withdrew the question. Now, I will put that question to you. What is your answer.

Mr. Miller: That calls for the conclusion of the witness, and that is the reason I withdrew it.

Mr. Jacobson: I didn't object to it because the form was bad.

The Court:

Q. Answer the question. This \$13,000 went to Marcuse personally? What did he let go of for the \$13,000?

A. The \$13,000 represented prepayments to Ben Marcuse for the office fixtures and incidental expenses in connection with the organization of the firm.

Mr. Jacobson:

Q. Now, these incidental expenses were used to promote the business to be conducted by Marcuse & Company, were they not?

A. I might say that in my estimate the incidental expenses were very normal. They only consisted principally of the rent and light, ticker service, and hardly salaries that I recall.

Q. You considered it a benefit to the future firm of Marcuse &

Company to have an office with quotations and tickers on months prior to the inception of the firm, did you not?

Mr. Miller: I object to that as immaterial; what he considered.

The Court: His evidence is that from an early day in April down to the 2nd day of July, expenses were incurred and furniture was used, furniture belonging to Ben Marcuse, personally, and that when this Marcuse & Company firm was organized that was all paid for by Marcuse & Company's money; they went into the firm premises and took over the furniture and the ticker and what other paraphernalia there was there. Whether or not they got the benefit of it is something which the court has got to find out. The witness can't add anything to that statement.

Mr. Jacobson:

Q. Mr. Platt asked you whether other customers didn't make objections to clerks, and were their wishes respected. Did you recognize any difference between Mr. Hecht and outside customers of the firm?

Mr. Platt: I object to what the witness recognized. I haven't the slightest objection to anything that was said or done in Mr. Hecht's presence.

The Court: Yes. This witness' recognition of the difference, if there was one, wouldn't go very far.

Mr. Jacobson: That will be all.

Mr. Wormser:

Q. Do you know from whom Mr. Marcuse acquired the furniture and fixtures?

A. Why, acquired it, as I remember, from the administrators of the estate of Von Frantzius.

Q. By purchase?

A. By purchase, yes.

Mr. Wormser: That is all.

P. M. ZUNCKER, called as a witness on behalf of the petitioning creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. You are Mr.——

A. P. M. Zuncker.

Q. Mr. Zuncker, you are made a respondent here to the petition that has been filed. You are the same gentleman?

A. Yes, sir.

Q. I show you what purports to be a contract dated April 2, 1917, and produced in evidence as Petitioners' Exhibit 1, and ask you if you are the same man who signed that contract?

A. The signature is off.

543 Q. Well, you did sign such a contract?

A. Well, I can't read it all this time.

Q. Look at it, please.

A. I signed one contract.

Mr. Miller: If that is what you want to establish, he is the Peter M. Zuncker who signed the contract of April 2, 1917.

The Witness: I signed a contract in Col. Foreman's office. If this is the copy of that I signed that.

Mr. Jacobson:

Q. I show you what purports to be a certificate, offered in evidence here as Petitioners' Exhibit 2, and ask you if you signed that document?

A. It looks like my signature.

Q. Well, don't you know if it is your signature?

A. Looks just like it.

The Court:

Q. Mr. Witness, can't you answer the question whether you signed that name there?

A. I do not know if this is a copy or an original signature, your Honor.

Mr. Jacobson:

Q. Can't you tell if that is a copy?

A. No, I can't?

The Court:

Q. Doesn't that look the way you write your name?

A. Yes, sir.

Q. Do you know your own signature?

A. I do.

Q. Is that yours?

A. It looks like mine, Yes.

The Court: Isn't that his signature?

Mr. Miller: I do not think there is any doubt about it.

The Court: For the purposes of this litigation, is that his signature?

Mr. Miller: Yes, no doubt about it. Let me see it.

The Witness: I have seen one before. It was a copy. I couldn't tell then about it.

Mr. Miller: Yes, for the purposes of this litigation anyway.

Mr. Jacobson: Now, you testified as a witness here on a prior examination, conducted by his Honor Judge Landis, on the 29th day of March, 1920, did you not?

A. Yes, sir.

Q. Do you recall this question being put to you by——

Mr. Miller: This is his own witness now; not mine.

544 The Court: Proceed. If you need to use that, there is a way to use it.

Mr. Jacobson: I thought we could save time, but counsel objects.

Mr. Moses: I understand, if your Honor please, we have a right to offer the evidence given by Mr. Zuncker as admissions against interests under your Honor's examination upon this hearing. Counsel has agreed with me he would waive the necessity of our calling the reporter to prove what he testified to at the prior hearing, and we desire to offer in toto the testimony given by the witness under your Honor's examination upon the prior hearing, it being admitted by counsel that the transcript that is being offered is a correct transcript of what he did testify to. That is, in my judgment, competent to be received in evidence in this case as an admission against interests.

I want to make the same offer with respect to the testimony of each individual who was examined by your Honor under that prior hearing under a similar stipulation, that the transcript is a correct transcript of what they testified to, and it will not be necessary for us to call the reporter.

Mr. Miller: This is my stipulation with Mr. Moses: I said to Mr. Moses that if there was anything in the previous examination of these witnesses, the examination before your Honor, which was admissible as evidence against them now, I would not require him to produce the shorthand reporter who took the testimony, but that might be read from the transcript of the testimony written up. That stipulation, of course, I stand by, because I made it, but that isn't what he is doing now. There is no occasion for calling this witness to the stand. If he wants to offer the part of his testimony out of that transcript, and the court ruled that any of it is admissible——

The Court: I say to you very frankly, that I am not clear that you have a right to call a witness, and without asking him, independently of any prior examination as to the facts, that you want to interrogate him about, put in evidence statements which he has made heretofore. I am not clear that the rules of evidence permit that.

Mr. Moses: Counsel makes no objection to it.

The Court: I get that. He concedes this is an actual write up of all the man said on the former occasion?

Mr. Moses: Mr. Miller is not objecting that the transcript as a transcript is not competent to be received by your Honor as
545 to what this witness said on a prior occasion, and it is admissible against this witness as an admission against the witness.

Mr. Miller: That goes to the materiality, and I reserve my right to make my objections as you go along with it but what I am saying is, that if there is anything in there which this court holds is competent to be introduced in evidence against this witness, I will not require the production of the shorthand reporter in the usual way, which

I could do, but it may be read from the transcript of testimony, to shorten it and save time.

The Court: You stipulate this is an actual and accurate write up of what took place at that time?

Mr. Miller: I assume it is. My stipulation is that he may use the transcript, and he need not produce the shorthand reporter to testify from his or her notes.

Mr. Moses: We desire to offer in evidence at this time, if your Honor please, the transcript of the evidence of this witness taken on your Honor's examination, which transcript we offer in evidence as what he said on that hearing, and if your Honor has any doubt but what that testimony is admissible as against the particular person who testified, we can of course furnish your Honor authority on that proposition.

The Court: I have no doubt of the admissibility of the prior statement in case there would be a denial now—testimony now contrary to what was given then.

Mr. Moses: No. Here is a litigant, a party himself, who made a statement in court upon an issue that is being tried now. It is a well settled ruled that in so far as his prior statements are competent to the issue, and, of course, it can't be gainsaid by counsel, and I do not think Mr. Miller will argue, that your Honor's examination was wholly relevant to this particular issue we are now trying—it can't be gainsaid by counsel that that testimony isn't competent to be received upon the issue.

Mr. Miller: I will tell you what I will argue. I will not question, of course, but that that portion of your Honor's examination which went to the question of whether he had a trust certificate, and what he paid for it, when he got it and so forth, is admissible, if there was any occasion to put anything of that kind in; but in so far as your Honor examined this man as to what he intended, or if he could tell you the difference between what his situation would have been as a limited partner and what it is under this trust agreement, 546 and so forth, I shall object to all of that evidence as wholly immaterial, and I would object to it if it was elicited from the witness now, the same as I did on this transcript, because under the law, as I have briefed the question, this question of whether he is or is not a partner has to be determined solely from the documents which were finally entered into, and all that preceded those things is merged in and swept into the discard by those documents.

The Court: In view of the objection which your adversary states, you may go ahead,—his objection going to the materiality.

Mr. Moses: We offer, if your Honor please, then, the transcript of the testimony of each of these witnesses that your Honor has examined.

The Court: There is nothing asked of him at that time that would be material now that isn't admissible now. The mere fact that he was examined on a former occasion and made what you might call a statement that you might regard as against interest, would not be admissible unless it is material to the issue on trial.

Mr. Moses: Yes. It is necessary then for us to read question by question and answer by answer.

Mr. Miller: That is what it is, so that I can make my objections as they go along.

The Court: Your adversary is entitled to that. It is admissible in so far as it is material to the issue.

Mr. Moses: It is all material to the issue, I think if your Honor please.

One other question I want to submit to your Honor, if it is possible to get an expression of opinion upon that subject from your Honor, because counsel has suggested that those objections he makes to questions about intent of the witness to do certain things—is not competent to be received. There are a good many questions in this record where your Honor asked the witness what he intended by certain acts of his. As I understand the theory of this lawsuit and of the possible liability of these men, it lies behind the written instruments. The theory is that these written instruments are mere forms, adopted to produce a certain result; that the parties intended a wholly different result, namely, the arrangement that was first put on paper, and which was afterwards modified by the destruction of the original

document as a writing, and the making of the supplemental
547 agreement as a writing. Now, if it is the law that in chancery actions of this kind we have the right to go behind the documents to ascertain the real intent of the parties in doing what they did, irrespective of what they wrote, it seems to me that the testimony is competent to be received. Now, if it isn't competent to be received, if your Honor please, then, of course, we may want to examine this witness again.

The Court: I suggest you go ahead with this and start in on it. When your adversary makes an objection to one of those questions which you speak of, I will pass on it.

Mr. Jacobson: Your Honor, I will read now from the transcript of the testimony of a hearing taken before your Honor, Judge Landis, in this court room on March 29, 1920, at 10:30 A. M. The witness at that time sworn was P. M. Zuncker, the same witness, same person who is now in the witness chair. (Reading:)

"The Court: What is your name, sir?

A. P. M. Zuncker.

"Q. Do you know Mr. Brown?

"A. I have seen the gentleman.

"Q. Mr. Hoffman?

"A. Yes.

"Q. Mr. Finn?

"A. Yes.

"Q. Mr. Regensteiner?

"A. I am not quite sure.

"Q. This gentleman sitting over here.

"A. I have seen Mr. Regensteiner.

"Q. I want you all to know each other.

"A. I only met him once.

"Q. I do not want any constraint of any kind among you. Do you recall Mr. Hoffman?

"A. Yes, sir.

"Q. Where did you first see him?

"A. In Colonel Foreman's office.

"Q. Colonel Foreman's office?

"A. Yes, sir.

"The Court: He has just identified the place as your office, Colonel. You had better sit down over here where you can hear this evidence.

"Q. When was that, Mr. Zuncker?

"A. In the early part of 1917.

"Q. Had you been a patron of Von Frantzius?

"A. I had been, yes.

548 "Q. Did that estate owe you some money?

"A. No, sir.

"Q. It did not?

"A. No, sir.

"Q. Why not?

"A. I don't know.

"Q. Did you finally get an interest in Marcuse & Company?

"A. No, sir.

"Q. None? These men here all tell me you did?

"A. I can't answer that question.

"Q. Are they wrong or are you wrong?

"A. I think they are.

"Q. You never got any dividends from any operation of Marcuse & Company?

"A. I got dividends from Hecht and Finn Trust.

"Q. Where did you get it?"

Mr. Miller: "Where did they get it."

Mr. Jacobson: Where did they get it, I beg your pardon. (Reading:)

"A. I suppose from Marcuse & Company."

Mr. Miller: Now, why that, your Honor, when the testimony which these gentlemen have already introduced discloses when the dividends were paid, how they were paid, how much they were, and where they went?

The Court: Go ahead.

Mr. Jacobson: Reading:)

"Q. What makes you suppose that?

"A. Because I know Hecht and Finn was interested in it.

"Q. You know Hecht and Finn were interested in what?

"A. In Marcuse & Company.

"Q. How did you find that out?

"A. Through seeing a certain agreement between the two.

"Q. You saw a certain agreement between Hecht and Finn?

"A. Yes, sir.

"Q. And you were not a party to it?

"A. Not with Marcuse & Company, no.

"Q. Were you a party to another agreement made between Hecht and Finn and Hoffman and Regensteiner and Vette?

"A. I had \$25,000 invested."

549 Mr. Miller: Wait. "I had \$25,000 in the Hecht and Finn trust agreement" is the answer.

Mr. Jacobson: No, sir. Here is a different transcript of it.

Mr. Miller: I have it right here.

Mr. Jacobson: I have that statement in the next answer.

Mr. Miller: Go on.

Mr. Jacobson (reading):

"A. I had \$25,000 invested.

"A. Yes, sir, in the Hecht-Finn Trust Agreement."

Mr. Miller: All right.

Mr. Jacobson (reading):

"Q. How did you happen to sign that agreement?

"A. I don't remember signing the agreement. I only——"

Mr. Buckingham: "I don't remember signing any agreement."

Mr. Jacobson (reading):

"Q. The Hecht-Finn Trust agreement.

"A. I don't think I signed it.

"Q. Did you get a certificate from the Hecht-Finn Trust?

"A. I got a certificate from the Chicago Title & Trust Company.

"Q. What was that certificate?

"A. Stating that I had—that I was to get the interest on the amount of money I had invested in the Hecht-Finn Trust that was in Marcuse & Company.

"Q. \$25,000?

"A. Yes, sir.

"Q. What interest did you have in Marcuse & Company? You say Von Frantzius didn't owe you anything.

"A. No, sir.

"Q. And Marcuse & Company owed you nothing?

"A. No, sir.

"Q. You were just making an investment?

"A. Yes, sir.

"Q. Who was it that let you in on this investment, do you remember?

"A. I can't say exactly who it was.

"Q. Did you have a lawyer?

"A. I did.

"Q. Who was he?

"A. Colonel Foreman.

550 "Q. Well, Colonel Foreman didn't advise you, as a business man, did he, on this? It was your own judgment, wasn't it?

"A. Why, it was my own judgment. I didn't want to get into any company or take any responsibility.

"Q. Who was it said something to you that made you make up your mind you would like to have a little interest in this thing? Who was that?

"A. Marcuse & Company approached me several times.

"Q. Who from Marcuse & Company?

"A. He himself.

"Q. Marcuse?

"A. Yes, sir.

"Q. What did he say to you?

"A. That I should invest money in his company.

"Q. What did you tell him?

"A. I wouldn't do it.

"Q. What did he say to that?

"A. He said I should go in under a special arrangement, under a special partnership.

"Q. What did you say to that?

"A. I told him that I didn't want to go into any responsibility; that I wouldn't take any chances of any responsibility and so on."

Mr. Miller: Now, if the Court please, I want to object to all this testimony as having taken place previous to the execution of the documents which finally formed this partnership, and if the Court cares to have me I am ready with the authorities to argue this. Under the cases all over the country none of this evidence is material, and it is just a waste of time of the Court.

The Court: Objection overruled.

Mr. Miller: Regardless of what the law is?

The Court: In obedience to the law I overrule you. Go ahead.

Mr. Jacobson (reading):

"Q. Then what did Ben say?

"A. Then he said I should have a chance to get into a special partnership where my limit would be the amount that I would invest in this here special partnership.

"Q. Just the same as if it were any other corporation?

"A. Yes, sir.

"Q. And you invested your money and would get a certificate, and if it went to the bad, that was the end of it?

"A. Yes, sir.

551 "Q. Did he make you believe that?

"A. Yes, sir.

"Q. You understood it was a special limited partnership arrangement, didn't you?

"A. Yes, when he first spoke to me of it, yes, sir.

"Q. Now, let me ask you this, Mr. Zuncker: You know Mr. Finn, do you?

"A. He is that gentleman there.

"Q. This gentleman here?

"A. Yes, sir.

"Q. Do you know Mr. Hecht?

"A. Yes, sir.

"Q. They are both pretty good men, aren't they?

"A. Yes.

"Q. Honest men?

"A. Yes, sir.

"Q. Pay their debts?

"A. As much as I know.

"Q. They were associates of yours in this matter?

"A. You are speaking of this special partnership?

"Q. In this partnership.

"A. They would have been if it had gone through.

"Q. If it had gone through?

"A. Yes.

"Q. They would have been in this like you were in it?

"A. Yes, sir.

"Q. Why was it that it didn't go through, and another plan was adopted? Why was that?

Mr. Miller: Objected to as wholly immaterial. The evidence shows it did not go through, and another plan was adopted.

The Court: Objection overruled.

Mr. Jacobson (reading):

"A. Speaking for myself, I told the Colonel a couple of times I wanted to drop out altogether. I didn't want to be mixed in it whatever, and they came in with different explanations and different arrangements, and it should have been signed up finally. I believe it had been signed up with the exception of Mr. Hecht, if I remember right, when something comes out that had to be made satisfactory to my attorney, Colonel Foreman. When it came to that, and they had to make these satisfactory explanations——

"Q. What was the outcome?

552 "A. The outcome was that the thing was canceled altogether.

"Q. Why was it cancelled? What was the reason it was cancelled? Why didn't the arrangement go through?"

Mr. Miller: I object to that as immaterial.

Mr. Jacobson: I haven't finished reading the question. (Reading:)

"Will you look at this exhibit, Mr. Zuncker, marked Court Exhibit A, March 29, 1920. Is that a photostatic copy of your signature?

"A. Yes, sir.

"Q. Why was it that that original agreement didn't go through making you and Hecht and Finn and Hoffman and Regensteiner and Vette all limited partners? Why didn't that agreement go through?"

Mr. Miller: I object to that as immaterial.

The Court: Objection overruled.

Mr. Jacobson (reading):

"A. I can't recall the different reasons, but one I know was that the Stock Exchange in New York wouldn't allow any special partnership with more than two special partners, so far as I remember.

"Q. Can you give any other reason?

"A. Not at that time, no, sir, not at that time."

Mr. Platt: "Not at this time?"

Mr. Jacobson: "Not at this time."

(Reading:)

"Q. So that if it had not been for that rule, so far as you know, as you now remember, that rule of the New York Stock Exchange, the arrangement which you had talked about and negotiated about, and signed up papers about, evidenced by these two documents, Court Exhibit A and Court Exhibit B of this date, it would have gone into effect as the arrangement among all you men?"

Mr. Miller: Objected to as immaterial.

The Court: Objection overruled.

Mr. Jacobson: Do counsel for the respondents agree that Court's Exhibit A was the original partnership contract of April 2, 1917, signed on that day, and that Court Exhibit B is the certificate signed at that time, being Exhibits 1 and 2 of this date, introduced in evidence by the petitioners?

Mr. Miller: I can't agree to it because I do not know.

Mr. Jacobson: I will make proof later, then.

Mr. Platt: They were the photostatic copies. I have the
553 originals here. I mean the original photostatic copies marked Exhibits A and B.

Mr. Jacobson: Now, do you agree?

Mr. Miller: Yes, if Mr. Platt can say to me——

The Court: They were marked at the time. They were marked at the time as has been specified.

Mr. Jacobson: Yes.

(Reading:)

"A. Yes, yes, if all of the rest of the objections would have been brought up at that time.

"Q. So far as you now remember, what other objection was brought up, except the New York Stock Exchange rule that there could only be two limited partners?

"A. I do not recall the objections now.

"Q. You can't recall any?

"A. It dropped out of my mind. I was glad it went off.

"Q. You recall that there was any other reason, except that Colonel Foreman came in one day at a meeting of these lawyers sitting around a table, and gave them the opinion that the New York Stock Exchange had a rule to that effect? Do you remember any other reason than that?

"A. I don't remember. I do not, your Honor. I let the Colonel do all that for me, and I don't remember.

"Q. Do you remember that he reported any other reason than that?

"A. He spoke of one other reason, but it has got out of my mind.

"Q. You do not remember that?

"A. No, sir."

That is as far as we will read at this time, your Honor.

Mr. Miller: Well, I suppose as cross-examination I have a right to offer a little myself, without waiving my legal point that none of this is admissible; but your Honor has ruled against me on that, so I adjust myself for the time being to that ruling, and read:

"Q. So that was abandoned and you got another arrangement?

"A. Yes, sir."

Mr. Jacobson: Well, now, in view of counsel's cross-examination, I will proceed to finish the examination of this witness. (Reading:)

"Q. Now, what I want to find out from you is how did you happen to hit on Hecht and Finn?

"A. We had dropped the matter altogether. I didn't want
554 to go into any arrangement at all. I was glad the thing was eliminated and was altogether called off. So after some due time I was approached again by—I can't recall who it was now—saying that I would have a chance of—

"Q. They would let you in?

"A. They would let me in, very likely, on the new arrangement where I had nothing to do with the business at all, wouldn't be connected with the business in any way or shape, only I could buy a trust certificate which would give me participation in the profits for the amount of money I would invest in the Hecht and Finn Trust.

"Q. That is the same thing you thought you were going to get under the limited partnership arrangement which you just told us about, wasn't it?

A. I do not recall.

Q. Well, now, let me refresh your memory. Don't you remember that you signed up these first documents with the understanding and for the purpose of thereby creating a situation from which you could only get benefits and no liabilities, do you remember that?

"A. This first?

"Q. Yes.

"A. Oh, no, I would have lost the \$25,000.

"Q. Well, your investment.

"A. Yes.

"Q. I understand. But did you understand under the first arrangement you could lose anything besides your investment?

"A. No.

"Q. Well, now, what else were you going to get under the second arrangement as finally fixed up? You might lose your \$25,000 if the business went bad, couldn't you?

"A. I don't know."

Mr. Miller: Just a moment. I submit to the Court that when we get into questions which call for legal conclusions and an explanation of the difference between his situation under one document and under another, it is hardly fair to expect a man who is engaged in the meat business to answer those questions. You might stump some lawyers with them.

The Court: The question wasn't what the legal effect of the two sheets of paper was, but what he had in mind as to what he was accomplishing.

Mr. Miller: Well, what he had in his mind, in the last 555 analysis, had got to be determined by the documents which finally were entered into.

The Court: On the contrary, if these men all set about to accomplish something else than that thing which is expressed in these documents, and then expressed these documents as they now read, these documents would not support the ultimate decree of a chancery court.

Mr. Miller: In a proper form of procedure, with proper allegations made in a pleading, and a prayer to reform the document to make it speak the real intention of the parties, yes; but not under such pleadings as we have here in this kind of a proceeding. You might just as well say, sir, that we, if this document between its four corners spelled a partnership, that we could put these men on the witness stand and have them testify, in the face of a written document which created a partnership, that they didn't intend to create one by it.

The Court: There would be an entirely different rule where they sought to escape their own declaration of liability. Go ahead. It may be that there will have to be some amendment to the pleadings, but I do not think so.

Mr. Jacobson: We charge them with being partners, your Honor.

(Reading:)

"Q. Well, what else were you going to get under the second arrangement as finally fixed up? You might lose your \$25,000 if the business went bad, couldn't you?

"A. I don't know.

"Q. You thought under no circumstances could you lost your \$25,000?

"A. Not the last time, no. I thought it was safe.

"Q. Why?

"A. Because Hecht and Finn are good men. I always had great confidence in —. I thought they would take care of my end of it. I would not lose in any way or shape.

"Q. You thought Hecht and Finn were good men, and because they were there you wouldn't be the loser in any way?

"A. Yes, sir.

"Q. Now, just a minute, Mr. Zuncker. You want to be just right about this, don't you?

"A. Certainly.

"Q. Sir?

"A. Certainly.

Q. You say you felt better under the last arrangement
556 because you felt that Hecht and Finn were good men and
would take care of your interests?

"A. I understood. I do not want to say that exactly.

"Q. Just exactly what is it you want to say?

"A. I had great confidence in the ability of Hecht and Finn.
They would invest no money in a place of that kind."

Mr. Miller: "If they would invest any money."

Mr. Jacobson: I accept the amendment.

(Reading:)

"They would have good business judgment used in the matter of
their investment.

"Q. On their original investment?

"A. I thought I was safe in the same way.

"Q. Did you understand that Hecht and Finn day after day,
week after week and month after month had anything to do with the
operation of that business?

"A. I don't know that.

"Q. Did you understand that Hecht and Finn were special part-
ners or general partners?

"A. Special partners.

"Q. Limited partners?

"A. Yes, sir.

"Q. In what way were they different in this situation from your
own? What were they getting out of this that you didn't get out of
it?"

Mr. Miller: I object to that as calling for a pure conclusion on the
part of the witness.

The Court: Objection overruled.

Mr. Jacobson (reading):

"A. That I don't know.

"Q. Did you ever hear that they would get anything out of it that
you didn't get out of it?

"A. Not that I know of.

"Q. What were they going to be charged with in this situation
that you were not going to be charged with? What liability did
Hecht and Finn stand to run up against that you would not have
to run up against?"

Mr. Miller: I object to that as calling for a legal conclusion from
the witness.

The Court: Objection overruled.

Mr. Jacobson (reading):

"A. For the amount of money they had invested.

"Q. The same with you. You would lose the amount of money
you would invest in the business?

557 "A. I didn't understand that. I thought I had better
chances.

"Q. Better chances than Hecht and Finn?

"A. Yes, sir.

"Q. Why?

"A. I had no money at all in Marcuse & Company whatever. I gave it to the trust of Hecht and Finn.

"Q. Where did the money come from that went into Marcuse & Company?

"A. Some came from me.

"Q. It came from the Hecht and Finn Trust, didn't it?

"A. Yes, very likely so. I only know of my own.

"Q. You paid \$25,000 into the Hecht and Finn Trust?

"A. Yes, sir.

"Q. It went to Marcuse & Company, didn't it?

"A. I suppose so.

"Q. You understood it should, didn't you?

"A. No, mine only should intend to go into the trust. What they done with it after the trial I do not know."

Mr. Miller: That answer is all mixed up. This is the answer:

"A. No, I only intended it should go into that trust."

Mr. Platt: "What they did with it I wouldn't know."

Mr. Miller: Well, between the three reporters here we will probably get this thing right.

Mr. Jacobson: I accept both amendments.

(Reading:)

"Q. What is your business?

"A. Meat business.

"Q. How old are you?

"A. 52.

"Q. You have rather important business matters from year to year, don't you?

"A. Well, more or less.

"Q. You don't run a little bit of a retail jerk water butcher shop out on 55th Street, do you? You have quite a business?

"A. A fair business, yes.

"Q. And you tell me you didn't know at that time and at that time did not know whether the money that you put into the Hecht and Finn Trust, for which you got a \$25,000 certificate—you didn't then know that Hecht and Finn were going to pay that money into Marcuse & Company? Now, before you say that finally, will you think it over. What did you think they were going to do with it—your \$25,000?"

558 Mr. Miller: Now, if the Court please, if that question was asked of this witness as he sits here on the stand now and I objected to it, would you allow it to be answered? It is cross-examination of that witness, isn't it?

The Court: I would require it to be answered.

Mr. Miller: Well, if you allowed it to be, that would do the work, but this is his witness now, although he is reading from the transcript. Can he cross-examine his own witness?

Mr. Jacobson: I believe we have made it clear he is a hostile witness, your Honor.

Mr. Miller: No.

The Court: That isn't cross-examination. That is just elucidation.

Mr. Jacobson (reading):

"A. Well, I didn't say I didn't know they were going to put in \$95,000 and use my \$25,000 for the same purpose; very likely so.

"Q. To go to Marcuse & Company?

"A. Very likely so.

"Q. Have you any doubt of it?

"A. I don't know. I couldn't say.

"Q. You don't know?

"A. No. It was my money.

"Q. Well, you haven't lost much so far."

Next appears a question by the Court (reading):

"Q. Have you been getting any dividends from the Hecht and Finn Trust?

"A. Yes, sir.

"Q. How lately did you get the last?

"A. I can't recall that.

"Q. Was it six months or three months ago?

"A. Must be somewhere around six months.

"Q. Did you get a dividend from the Hecht and Finn Trust amounting to five per cent on your \$25,000 investment in the Hecht and Finn Trust about the 1st of January of this year?

"A. I think so.

"Q. Now, let me ask you this question: Did you understand that Hecht and Finn were in any different situation in Marcuse & Company, or in the Hecht and Finn Trust, with respect to Marcuse & Company, than you and Regensteiner and Vette and Hoffman were? Did you understand they were in any different fix than yourself?

"A. They were in as special partners. I wasn't in at all.

559 "Q. They were in as special partners because the New York Stock Exchange would only let two of you in. Didn't you say that?

"A. Yes, sir. I had gone altogether out of this business when the first arrangement was cancelled. I was out of it in every way or shape.

"Mr. Platt:

Q. Mr. Zunker, isn't it a fact that you and Vette and Regensteiner, or his representative, Mr. Hoffman, or his representative, and Hecht and Finn, all got together in an office and each put in your checks, aggregating \$190,000, all at one time on one table together into Marcuse & Company?

"A. Not to my knowledge."

Mr. Jacobson:

Q. Now, Mr. Zuncker, did you not know that these checks which have been offered in evidence here as Petitioner's Exhibits 7 to 12, inclusive, and Petitioner's Exhibit 17, were deposited at the office of Marcuse & Company on June 30th, 1917?

Mr. Miller: I would like to have the record show that counsel has laid aside the transcript from which he was reading and now begins the examination of the witness. Read the question, please, Mr. Reporter.

(Question read.)

Mr. Jacobson:

Q. What is your answer?

A. No, I didn't know.

Q. Didn't you ever find it out?

A. Yes, I find out that my check went through the office of Marcuse & Company afterward.

Q. This is your check, is it not, Petitioner's Exhibit 9?

A. Yes, sir.

Q. When this check came back from the bank paid, endorsed "Marcuse & Company" did you make any objection to that fact?

A. No, sir.

Q. Did you criticize anybody for having given that money to Marcuse & Company?

A. No, sir.

Q. Was that in accordance with your wishes, yes or no?

Mr. Miller: I object to that, as to what his wishes were.
The Court: Strike out "wishes" and insert "intentions."

Mr. Jacobson:

Q. Was that in accordance with your intentions?

560 A. I had no intention in that matter at all, as I was not connected with this here business.

Q. Did you know that Mr. Henry Vette had also furnished a check for \$30,000?

A. Yes, sir.

Q. At the same time?

A. About the same time, yes.

Q. Was he your partner in other business affairs?

A. No, sir,—he was my partner—my personal partner.

Q. I understand. Did you know that his money went to Marcuse & Company?

A. At the time the check was made out, is that the time you want to know?

Q. Yes.

A. You want to know now or at that time?

Q. Did he at that time make any objection to the fact that his money went into Marcuse & Company's account?

Mr. Miller: Oh, that assumes that he knew about it.

Mr. Jacobson:

Q. If you know?

A. I didn't know it until after the check came back, and we found out that "Marcuse & Company" was stamped on it, went through their office.

Q. You say now, Mr. Vette didn't know that until after the check went through the bank a month later, that money went into Marcuse & Company's hands?

A. As much as I know, yes.

Q. When did you find that out for the first time?

A. I suppose after the month was over and the checks came back. I doubt if he looked at it at that time, as he hardly ever does. I don't think he did at that time.

Q. And when did you find out that your money went into Marcuse & Company?

A. Well, now you say "when did I find out that my money went into Marcuse & Company."

Q. That your \$25,000 check, payable to Frank A. Hecht and Joseph Finn, went into the account of Marcuse & Company?

A. Here shortly when I picked up my check when I looked for the check, I found that the check was signed "Marcuse & Company," that is the first time that I knew it went through Marcuse & Company at all.

Q. That was in 1920?

A. Yes, sir.

561 Q. And you didn't know of it until just shortly, is that right?

A. I didn't know, no, that my check went through Marcuse & Company.

Q. So you are sure now that your check was delivered to Hecht?

A. My check was delivered to Hecht and Finn, yes.

Q. Don't you know that your check was not delivered to Hecht and Finn at all?

A. I don't know that, no.

Q. Whom did you give your check to?

A. Mr. Robertson, to my recollection.

Q. Didn't you write out this check at the office of Marcuse & Company?

A. I did not.

Q. Didn't you ask Mr. Engstrom to fill the check out for you, that you would sign your name?

A. I don't recollect it, no.

Q. Will you look at this check and state in whose handwriting it appears to be? (Handing check to witness.)

A. I don't know.

Q. Look at it.

A. I don't know.

Q. Look at it now.

A. No use of my telling. I couldn't tell if I looked.

The Court: Mr. Witness, can you see it?

A. I can see the handwriting. I don't know whose it is.

The Court:

Q. Do you know whose handwriting that is?

A. I don't; but I have heard Mr. Engstrom state before that he wrote it out.

The Court: Do you recognize the handwriting in the body of the check as the handwriting of your bookkeeper or person who in your business,—your meat business, makes out your checks?

A. I don't know who wrote it out. I asked myself several times; could not make it out until I heard Mr. Engstrom say that he wrote it out.

Mr. Jacobson:

Q. Did you sign this check before it was filled out or after?

A. After it was filled out.

Q. Where was it filled out?

A. I don't recollect.

Q. Where did you sign it?

A. I don't remember; I think it was in Colonel Foreman's office, if I remember.

562 Q. What day did you sign it?

A. I don't remember.

Q. Don't you know that you were in the office of Marcuse & Company on June 30th, 1917, and there signed this check, Petitioner's Exhibit 9?

A. No, sir, I don't know.

Q. At the time you signed this check, Petitioner's Exhibit 9, did you find out whether other people also signed checks?

A. No, sir.

Q. Didn't you try to find out?

A. Not to my knowledge, no, sir.

Q. You never inquired into that?

A. No, sir, not to my knowledge.

Q. And until March of this year, 1920, you had no idea of where that money went to, did you?

A. I know my money went to Hecht and Finn trust,—to the parties that the check was made out to.

Q. Show me where you made out a check to the Hecht and Finn Trust.

A. Oh, I mean Hecht & Finn personally.

Q. Oh, to Hecht and Finn personally?

A. Yes, for the securing of a trust certificate.

Q. Is this the only check you ever gave to Hecht and Finn, or to the Hecht and Finn Trust?

A. Yes.

Q. There is no other check?

A. Not to my knowledge, no.

Q. Don't you know this check is made out to Frank A. Hecht and Joseph Finn?

A. Yes, sir.

Q. So that it had nothing to do with the Hecht & Finn Trust?

A. The check went to Hecht & Finn to secure a trust certificate from the Hecht & Finn Trust.

Q. Did you hand it to Hecht and Finn?

A. No, sir, not that I know of.

Q. Whom did you hand it to?

A. I think I gave it to Mr. Robertson here.

Q. Do you remember the day you handed it to Mr. Robertson?

A. I don't, no.

Q. What do you imagine happened to this money?

Mr. Miller: Oh, his imagination, we are not interested in, are we?

563 The Court: No.

Mr. Jacobson:

Q. Now, I showed you a short time ago what purported to be Petitioner's Exhibit 1, and you stated at that time that you could not tell the signatures on it because they were torn off. I show you now what purports to be a photo-static copy of a document that is marked "court's Exhibit B" and ask you if that was the document about which Judge Landis interrogated you on March 29th, 1920?

A. Is this the agreement—the first agreement where we all was to be partners, special partners?—

Q. Can't you—

A. Marcuse and Morris,—or general partners?

Q. Can't you look at that, please, and decide for yourself?

A. I can't read that whole thing through.

Mr. Miller: If the Court says that was the document, we don't raise any question about it.

The Court: The documents were here and those were the documents which I was questioning him about, and they were marked at the time "Court's Exhibit" something, I forget what.

Mr. Platt: They bear your Honor's marks.

The Court: They were identified in the Court's questioning of the witness by the exhibit number on the document.

Mr. Jacobson: I am now going into the question of the credibility of this witness' testimony; that is the purpose of it.

Q. Will you look at this document which is marked "Court's Exhibit A," and state whether that was shown you on March 29, 1920, by his Honor Judge Landis?

A. I don't know if this is the same one.

Q. Well, look at it.

A. I think it was, because it is my signature on in the same way I see Mr. Vette's, so I know the two signatures.

Mr. Jacobson: I offer in evidence as Petitioner's Exhibits 23 and 24.—Petitioner's Exhibit 23 being Court's Exhibit A of March 29th, 1920, and Petitioner's Exhibit 24, being Court's Exhibit B of March 29th, 1920, and ask they be so marked.

Mr. Miller: I object to that as wholly immaterial under the issues; as incompetent because of ante-dating the execution of the final documents.

The Court: Overruled.

(Whereupon said documents were received in evidence, marked Petitioners' Exhibits 23 and 24, respectively, and were and are in words and figures as follows, to-wit:)

564-571

Petitioners' Ex. 23.

Ct. Ex. A. 3/29/20. K. S. H.

[Omitted; printed p. 340.]

572

Petitioners' Ex. 24.

This is to certify, That the Undersigned, Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, being desirous of forming a limited partnership under the provisions of an Act of the General Assembly of the State of Illinois, entitled "An Act to Revise the Law in Relation to Limited Partnerships," approved March 18, 1874, in force July 1, 1874, do hereby certify:

(1) That the name or firm under which such limited partnership is to be conducted, shall be Marcuse & Co., the words "& Co." in said firm name referring to L. H. Morris only.

(2) That the general nature of the business to be transacted is the brokerage business of buying and selling for others on commission, stocks, bonds, grains, provisions and various commodities dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in.

(3) That the names and places of residence of the general partners are Ben Marcuse, Congress Hotel, Chicago, and L. H. Morris, 440 Diversey Parkway, Chicago; and the names and places of residence of the special partners are Frank A. Hecht, 2952 Lake Shore Drive, Chicago; Richard Yates Hoffman, 1310 E. 54th Street, Chicago; Peter M. Zuncker, 2312 North Kedzie Boulevard, Chicago; Henry Vette, 1257 N. Rockwell Street, Chicago; Joseph M. Finn, 533 Diversey Parkway, Chicago; Theodore Regensteiner, Congress Hotel, Chicago.

(4) That the amount of capital stock which each special partner has contributed to the common stock is:

Frank A. Hecht	\$25,000	95,000
Richard Yates Hoffman	50,000	
Henry Vette	30,000	
Peter M. Zuncker	25,000	
Joseph M. Finn	31,500	95,000
Theodore Regensteiner	28,500	

(5) That the period at which the said Partnership is to commence is July 1st, 1917, and the period when it will terminate is June 30th, 1922.

Cl. Ex. B. 3/29/20. K. S. H.

(6) In the partnership articles of agreement by and between the said partners, it is stipulated that the death of any or either of them, except the said Ben Marcuse, shall not work or cause a dissolution of said copartnership, and that in the event of the death of any or either of them, except the said Marcuse, the said copartnership shall continue until the termination thereof by limitation.

In Testimony Whereof, We have hereunto set our hands and seals this 2nd day of April, A. D. 1917. (Signed) Ben Marcuse. (Seal.) (Signed) L. H. Morris. (Seal.) (Signed) F. A. Hecht. (Seal.) (Signed.) Rich'd Yates Hoffman. (Seal.) (Signed) Henry Vette. (Seal.) (Signed) Peter M. Zuncker. (Seal.) (Signed) Joseph M. Finn. (Seal.) (Signed) Theodore Regensteiner. (Seal.)

STATE OF ILLINOIS,
Cook County, ss:

I, John L. Anderson, Notary Public in and for said County, in the State aforesaid, do hereby Certify that Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial Seal, this 2nd day of April, A. D. 1917. (Signed) John L. Anderson, Notary Public.

STATE OF ILLINOIS,
Cook County, ss:

Ben Marcuse, being duly sworn, on oath deposes and says that he is one of the general partners named in the foregoing Certificate of Limited Partnership signed by Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph M. Finn and Theodore Regensteiner, and that the amount specified in said Certificate to have been contributed by each of the special partners, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, and Joseph M. Finn and Theodore Regensteiner, the special partners to the common stock, the aggregate of said amount being \$190,000, has been actually and in good faith contributed and applied to the same. (Signed) Ben Marcuse.

Subscribed and sworn to by the said Ben Marcuse before me, this 5th 30 day of April, A. D. 1917. (Signed) John L. Anderson, Notary Public.

Examination by Mr. Moses:

Q. Mr. Zuncker, when that original agreement of April 2nd, which you all had signed, was ended, when did you first learn about that?

A. Colonel Foreman called me up by the telephone and told me it was all off.

Q. When?

A. Oh, shortly after the signature was put on this here document; shortly after they signed it.

Q. How long after,—six weeks?

A. No, maybe a week.

Q. A week, you think?

A. Or ten days or two weeks. I can't tell exactly. He called up and said, "Mr. Stein was over there—"

Q. I don't care what he said. I simply want to know when you learned it.

A. About a week after.

Q. When again did you talk to anybody about that Marcuse matter, or the Marcuse agreement?

A. Maybe another week or ten days after that.

Q. With whom did you talk?

A. Colonel Foreman.

Q. That is the same Colonel Foreman who had drawn that original agreement which you had signed?

A. Yes, sir.

Mr. Miller: Oh, Mr. Moses, there is only one Colonel Foreman.

Mr. Moses:

Q. How often after that did you talk to Colonel Foreman about the matter?

A. Maybe a couple of times.

Q. Colonel Foreman was your lawyer?

A. Yes.

575 Q. Were you ever present at a conference with Colonel Foreman in which anybody else was present when that matter was discussed?

A. You are now relating to the second?

Q. Yes, sir.

A. No, sir.

Q. Were you ever present with Mr. Sydney Stein when the matter was discussed?

A. No, sir.

Q. Well, when Colonel Foreman called you on the phone he said to you that the agreement could not be carried through, didn't he, because of the fact that the Stock Exchange rule required that only two persons could become special partners?

A. No, there were other reasons.

Q. Can you tell us any other reasons?

A. I have the reasons laid down in a letter I got off Colonel Foreman. I believe my attorney has the letter here.

Q. I am talking now about the telephone conversation. Was there any other reason then?

A. I think he mentioned the reasons,—some reasons about arranging matters in court, very likely, or the Von Frantzius deal, or they could not do so.

Q. Did you after your original talk with Mr. Foreman on the phone, ever talk to Mr. Marcuse on the subject?

A. I told Mr. Marcuse I would have nothing to do with it.

Q. Well, after that; after that?

A. After that, yes.

Q. Did you talk to Mr. Marcuse and indicate to him that you would have something to do with it?

A. Not have nothing to do with it.

Q. Didn't Mr. Marcuse call upon you after the original arrangement was entered and talk to you about it?

A. He came to me and said I could buy some trust certificates that Mr. Stein had gotten up in the way of a trust agreement between Mr. Hecht and Finn—

Q. For what purpose?

A. —we could buy some certificates.

Q. For what purpose?

A. I suppose—

Mr. Miller: Not your supposition; what did he say to you?

Mr. Moses:

Q. What did he say, for what purpose?

A. Well, so Mr. Hecht and Finn can contribute enough money to the business to get Marcuse and Company a going firm.

576 Q. What business?

A. Marcuse & Company, the brokerage business.

Q. And he wanted you to contribute to or help contribute to Hecht and Finn the fund that would enable Marcuse & Company to continue in business, is that right?

A. He wanted me to invest my money in a trust certificate in order to give money to Hecht and Finn to go into this business.

Q. In other words, so that you knew when you gave your \$25,000 check that Hecht and Finn were going to use that money together with their own, to continue Marcuse & Company in business, isn't that right?

A. That was the belief that Mr.——

Q. Isn't that right now, Mr. Witness?

A. Not exactly, no.

Q. So that when you gave your check to Hecht and Finn after you had these talks with Mr. Marcuse and after Marcuse had told you that a plan had been worked out you knew then, didn't you, that your checks together with Hecht and Finn's checks were going to be used for the continuance of Marcuse & Company's business?

Mr. Miller: You don't mean the continuance, do you?

Mr. Moses: Yes, that is just what I mean.

Mr. Miller: I object to that as assuming that Marcuse & Company—

Mr. Moses: Toward the starting of the Marcuse & Company business.

A. That would enable—I knew that if I would buy certificates then Hecht and Finn would be enabled to get enough money together to start Marcuse & Company.

Q. But a part of that money would be your money?

A. That I did not know if they wanted to use my money or would release their own money in order to do so. I had no idea about that.

Q. You hadn't any idea on that subject?

A. No.

Q. As far as you know they were releasing your money and using their money for that purpose, is that it now?

A. No. In their own business. You don't catch my idea.

Q. You know they were not releasing any of their own money, didn't you, for the purpose of enabling them to use your money in the Marcuse & Company business, didn't you?

A. If they wanted to become special partners, and wouldn't have any ready money they would sell a trust certificate like they would sell stock. I bought a trust certificate.

577 Q. Do you know how much money was going to be used by Marcuse & Company. Just withdraw that. Did you know how much money Messrs. Hecht & Finn were going to contribute as special partners to Marcuse & Company?

A. From one hundred and fifty to two hundred and fifty thousand dollars, I was led to believe, that they had to have.

Q. When you first signed the paper what was the total sum that was going to be contributed by all of you?

A. I believe it was 190,000.

Q. You knew then it was 190,000, didn't you?

A. Yes, sir.

Q. Did you know when you took your trust certificate from the Chicago Title & Trust Company what the total amount of trust certificates were that were to be interested in that Hecht and Finn trust?

A. Yes.

Q. How much?

A. About the same amount, \$190,000.

Q. Was that a coincidence in your mind?

A. What is that?

Q. A coincidence that just happened that way?

Mr. Miller: Well, what does counsel mean?

A. I didn't mean to say that exactly.

Mr. Moses:

Q. That was done intentionally and you knew it, didn't you?

A. Seems to be.

Q. So that when you and the remainder of these certificate holders contributed, you knew that the remainder of the certificate holders would, together with you, contribute \$190,000, is that right?

A. Yes.

Q. And that the individual contributions that you were each contributing to the Hecht and Fien Trust were identical with the contributions that you as special partners were to have made had the original agreement been carried out, that is true, isn't it?

A. In my own case, I knew.

Q. Well, you knew it also as to Vette's case, didn't you?

A. Yes.

Q. Now, at that time when you made your contribution or just before the time you had made your contribution had you had a great many talks with Mr. Roberston on the subject?

A. Yes, sir.

578 Q. He was drawing this paper that was to carry this matter out, wasn't he?

A. He was looking to my end of it. I don't think he was drawing it up, no.

Q. He was representing your end of it?

A. Yes.

Q. So that you knew, didn't you, for some period before the final paper was drawn and before you gave your check that there was a plan being worked out to enable a contribution to be made toward a capital which Marcuse & Company was going to use,—that is true, isn't it?

A. Yes, but this trust certificate—

Q. And that those objections that had been made, that you say were evidenced in a letter to you by Mr. Foreman, were in some manner to be overcome?

A. No, I didn't know that.

Q. What?

A. I didn't know, no. I wouldn't have went into anything like it. This is a new thing altogether.

Q. It was a new thing altogether?

A. Absolutely.

Q. Can you tell us how it was new?

A. Because I had nothing to do with the special partnership at all no more.

Mr. Moses: That is all.

The Witness: Absolutely; no.

The Court: We will suspend this hearing, gentlemen, until half after ten tomorrow morning.

(Whereupon an adjournment was taken until Tuesday, May 11, 1920, at the hour of 10:30 o'clock, A. M.)

In the Matter of MARCUSE & COMPANY, Bankrupts.

Landis, J.

Tuesday, May 11, 1920—10:30 o'clock a. m.

Court met pursuant to adjournment.

Present: Same as before.

Mr. Miller: Mr. Buckingham calls my attention to the fact that yesterday when I asked that all of the objections I might make stand for the people I enumerated, without mentioning their names as I went along, I omitted to mention the name of Clement Studebaker, Junior.

579 The Court: Your objections and exceptions—the exceptions save themselves automatically when I overrule the objections. Everybody that is mentioned in these pleadings, beyond Hecht and Finn—

Mr. Miller: Yes, sir.

The Court: —are included in the record.

Mr. Miller: Very well. I would like to have it show that I omitted the name of Clement Studebaker, Junior.

P. M. ZUNCKER, resumed the stand, and testified as follows:

Cross-examination by Mr. Platt:

Q. Mr. Zunker—

Mr. Miller: If the Court please, before Mr. Platt starts his cross-examination, I object to Mr. Platt cross-examining Mr. Zunker because there is no issue now on trial here between Mr. Zunker and the client that Mr. Platt represents.

The Court: Objection overruled.

Mr. Platt: I will say to the gentleman there is at least a grave difference of opinion, if not an issue.

Q. Now, Mr. Zunker, you remember quite distinctly now, do you not, that you personally on the 2nd of April, at Colonel Foreman's office, signed these two papers that have been marked Petitioners' Exhibits 1 and 2 yesterday?

A. That is the—

Q. That is the contract of April 2nd of special partnership, and the certificate.

A. I remember that I signed something, yes.

Q. And you remember that then, or the next day, you received this letter from Colonel Foreman, marked Zunker Exhibit 12, which your counsel put in evidence yesterday, do you not?

A. Yes, sir.

Q. No doubt that you received that promptly after those signatures, is there?

A. Yes, sir.

Q. Now, Mr. Zuncker, as I understand your testimony yesterday, and I want to be sure that I understood it correctly, the reasons that are contained in this letter for delay, and the objection of the New York Stock Exchange to having more than two special partners, were the reasons, and the only reasons, why this contract of April 2nd was abandoned, is that correct?

A. I cannot say that.

Q. Well, what other reasons were there?

A. I do not know.

Q. Can you tell me of any other reason that was ever suggested to you than those which I have now enumerated?

A. No, sir.

Q. Now, Mr. Zuncker, after this 3rd day of April, 1919, when you received this paper from Colonel Foreman—

Mr. Miller: 1917.

Mr. Platt:

Q. 1917. —you were in very frequent consultation with Colonel Foreman or with Mr. Robertson about this matter, were you not?

A. Yes, sir.

Q. How many conferences do you think you had with either Foreman or Robertson between the 3rd day of April, 1917, and the 30th day of June of that year?

A. Oh, several of them.

Q. Well, a good many, weren't there?

A. I couldn't say that just now.

Q. Well, give your best judgment as to how many conferences you had with either of those gentlemen during that period.

A. Maybe three, four or five. I can't say exactly.

Q. Not more?

A. Not that I know of, no.

Q. They were representing you in the matter and looking after your interests, were they?

A. Yes, sir.

Q. Now, Mr. Zuncker, long before the—or before the 30th of June, 1917, you knew, did you not, that definite arrangements had been made with the administrators of the Estate of Frederick W. (alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as Trustee, of all of the Estate of Frederick W. (alias Fritz) Von Frantzius, excepting such amount thereof as the Probate Court might deem it necessary to have the administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the cost and expenses of the administration?

Mr. Miller: Objected to as assuming that is true.

Mr. Platt: I am going to find out whether it is true or not.

581 This is cross-examination.

Mr. Miller: Counsel has no more right to assume a statement of fact on cross-examination than on direct; he may ask if that is true, but he cannot assume it, as I understand the rule.

The Court: Go ahead.

Mr. Platt:

Q. Mr. Zuncker, you had been informed, either by Mr. Robertson or by Colonel Foreman, that that matter had all been cleared up, had you not?

A. No, sir.

Q. You never have been informed by them of that fact?

A. No, sir.

Q. Then when you put your money into the—turned that check for \$25,000 over to Hecht and Finn, as you say you did, on the 30th day of June, 1917, you didn't know whether arrangements had been made to turn over those Von Frantzius assets to Marcuse?

A. No, I was not interested in it no more at all. I didn't care what they done or what they tried to do. My interest was all gone away from that whatever.

Q. You didn't have any interest in the prospective limited partnership of Marcuse & Company?

A. No, sir.

Q. Didn't care whether Marcuse had the Von Frantzius assets or not?

A. No, sir.

Q. Didn't care whether Marcuse started up in business or not?

A. No, sir.

Q. Had no interest in that?

A. No, sir.

Q. Didn't expect to have any interest in that?

A. No, sir, never wanted to have any in Marcuse & Company.

Q. Now, didn't Colonel Foreman or Mr. Robertson tell you before the 30th of June that the proceedings in bankruptcy against Von Frantzius & Company, which had been pending in the United States District Court, had been dismissed?

A. No, sir.

Q. Neither one of them told you that?

A. Not to my knowledge, no, sir.

Q. Do you remember whether they did or not?

A. Not to my knowledge, no.

Q. Now, Mr. Zuncker, Mr. Robertson was your attorney?

582 A. Yes, sir.

Q. And Colonel Foreman was your attorney?

A. Yes, sir.

Q. They cannot testify, as I understand the law to be, to conversations with you, without your consent. Do you now consent that if they shall be put on the stand and interrogated as to what their talks with you were between the 3rd of April, 1917, and the 30th of June, that they may answer?

A. Yes, sir.

Mr. Miller: Just a moment. Rest your head in peace. They are going on the stand and you may go at them ad libitum.

Mr. Platt: I do not know that I need Mr. Miller's permission to go at them, if your Honor please, nor do I depend upon that for my right to cross-examine them.

Q. Now, Mr. Zuncker, you didn't care on the 30th of June, as I understand it, whether the bankruptcy proceedings against Von Frantzius & Company had been dismissed or not.

A. No, sir.

Q. You didn't at that time know it would ever effect your pocket-book one way or the other, whether they had or not?

A. No, sir.

Q. You didn't even know that Ben Marcuse and Lew Morris were going to start up in business again?

A. Why, I understood they would if they could get the money together.

Q. If they could get the money together. But you didn't understand the Von Frantzius settlement had anything to do with it?

A. No, sir.

Q. You thought they were going to start an entirely new business?

A. Yes, sir.

Q. Without any reference to Von Frantzius & Company.

A. My belief.

Q. On the 3rd day of April you knew they couldn't start in business, did you not, until these two matters were disposed of?

A. Yes, different things that were up. I had a letter—I had a letter to that effect.

Q. This is the letter (indicating)?

A. Yes, sir.

Q. And those are two things that had to be disposed of?

A. Yes, sir.

583 Q. And you knew on the 3rd of April it was a vital matter of vital importance to your investment in the prospective firm of Marcuse & Company that these two things should be disposed of, did you not?

A. It had to be disposed of in order to be able to form a company.

Q. In order to be able to form the company. But you say you didn't know on the 30th of June that those things had been disposed of at all in order to form the company?

A. No, sir, didn't care no more. It was off of my mind altogether.

Q. Now, Mr. Zuncker, so that there may be no misunderstanding, do I understand you now to say that you didn't know when you drew this check for \$25,000 that the money on this check was going to Marcuse & Company?

A. My understanding was that that check, or the money of that check, would purchase a certificate of the Hecht and Finn Trust.

Q. Now, Mr. Zuncker, didn't you know that the proceeds of the purchase of what you call the certificate of the Hecht-Finn Trust were going into Marcuse & Company?

A. I couldn't say that. I gave that to Hecht & Finn, and they

could put it in their pocket or in the bank and use their own money or use this. I didn't care what they did with it or intended to.

Q. You didn't even know that your \$25,000 was going to be so invested that you would receive part of the profits of the firm of Marcuse & Company, is that right?

A. I did know that, yes.

Q. You did know that?

A. Not my money, but some money was invested. I didn't know it was mine. It might have been Mr. Hecht's or Mr. Finn's personal property that was invested in there.

Q. Mr. Zuncker, will you answer me this yes or no: Did you or did you not know that your \$25,000, to be represented by this check, was to be so invested in the firm of Marcuse & Company that you would receive 25/190ths of the profits set apart for the limited partners in that concern? Now, did you know that, or didn't you?

A. I know that my money was to receive part of that profit—or rather for this trust certificate.

The Court:

Q. Say, Mr. Witness, let us not have any more waste of time. Did the question of the success or failure of the business of
584 Marcuse & Company have any bearing on the earnings on your trust certificate?

A. Yes, sir.

The Court: I do not like this fencing about this thing.

The Witness: I am not trying to, Judge.

The Court: What?

The Witness: I do not try to, Judge, to fence.

Mr. Platt:

Q. Mr. Zuncker, your certificate, which you had in your possession until you turned it over to Mr. Miller, your counsel, I believe very recently, referred to the Hecht-Finn Trust, didn't it?

A. Yes, sir.

Q. You were given a copy of that Hecht-Finn Trust, were you not?

A. Yes, sir.

Q. When did you receive that typewritten copy of the Hecht-Finn Trust agreement, so-called, which your counsel now has?

A. To the best of my recollection, the week after June 30, 1917.

Q. From whom did you receive that?

A. From Foreman, Robertson & Levin's office, my attorney's office.

Q. Now, that trust agreement, Mr. Zuncker, which you received was in all respects, identical with Petitioners' Exhibit 6 which was offered in evidence here yesterday, wasn't it?

I am not showing him his copy, because his counsel has marked it up.

A. Well, if this is a copy of one I handed to Mr. Miller, that is the one.

Mr. Platt: I will hand it to your counsel.

Mr. Miller: Maybe I can shorten it.

Mr. Platt: Pardon me. I prefer to have the witness answer.

Mr. Miller: Go ahead.

Mr. Platt:

Q. Here is the paper, Mr. Zuncker, which your counsel has cordially produced, but which he said was marked up, and which I have, therefore, not examined (handing documents to witness). Are those two the same?

A. If this is a copy of this one, they are, yes, sir.

Q. Have you any doubt about them being copies?

A. No, I have no doubt.

Mr. Platt: All right.

585 The Court:

Q. Look at them, Mr. Witness, and satisfy yourself.

The Witness: I have no doubt, your Honor. If Mr. Platt says they are, I am satisfied.

The Court: Are they in fact?

Mr. Platt: I have never seen that.

Mr. Miller: I just started to help him on that and he didn't want my help.

The Court: You can take those and look at the bottom of the pages of the two documents, and if they come out the same, why, you can assume—at least the bottom lines.

Mr. Platt:

Q. Now, Mr. Zuncker, have you satisfied yourself that those two are the same?

A. Yes, sir.

Mr. Platt: I hand your copy back to your counsel and the exhibit to Mr. Jacobson.

Q. Now, Mr. Zuncker, during the interim between the 9th or 10th of May and the 30th of June you and your counsel had had frequent conferences about this agreement which they sent to you sometime shortly after the 30th of June, had you not?

A. Very few.

Q. Your counsel had explained to you before you put your money into the concern what the different provisions in this document were, had he not?

A. Only in a general way.

Q. Well, in a general way he had done so. And you reposed such confidence in him or them that you didn't ask any more particulars, is that right?

A. About that way.

Q. You knew then, Mr. Zuncker, when you put your \$25,000 into that trust, as you call it, that you would have a right, without any

interference, interruption or hindrance to have access to the books of Marcuse & Company, didn't you?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. You saw it in the Hecht-Finn Trust, did you not?

A. I didn't read it.

Q. You never read the Hecht-Finn Trust?

A. No, only slightly, because I wouldn't remember one page from the other no more.

Q. You say you read it only slightly. Just tell us what you did when you read it only slightly?

586 A. Oh, I read the heading of different things, and then I quit, because after I read two or three pages of it I do not know no more the first of it. I am not used to legal expressions or terms, and I gave them up.

Q. When did you first learn under the terms of the contract you had the right, without any interference, interruption or hindrance, by either the Trustees or general partners, to have access to the books of account of said copartnership?

A. I didn't know I had it as yet.

Q. You don't know it even yet?

A. No.

Q. Mr. Zuncker, you still think that on the 30th of June, 1917, you were not in the office of Marcuse & Company?

A. Yes, sir.

Mr. Platt: I have asked Mr. Zuncker's attorney to bring down the stub of this check. I didn't give him the notice in sufficient time for him to reach his client.

Q. I understand you will look for it and produce it later on?

A. I will, yes, sir.

Mr. Miller: I telephoned him, but he had left for down town.

Mr. Platt: I stated I took the blame for that. As soon as I got Mr. Zuncker's testimony written out I called up Mr. Miller, but it was a quarter after nine and he had left. I was making the statement to take the blame on myself.

Q. Now, do you keep personal books showing your investments and receipts and disbursements?

A. No, sir.

Q. Well, you keep stubs of your checks then?

A. Most of them, yes, sir.

Q. Now, you say most of them. Don't you keep the stubs of all your checks?

A. Not of my personal, no.

Q. Well, this is just to test that statement. For instance, take your income tax returns for 1916, 1917, and 1918. Do you use your check stubs for making up those income returns?

A. Yes. I got copies of the income from the year before—for the years you have mentioned.

Q. Well, I know, but I say for the purpose of making those up,

and so that the Government inspectors may check them over, you have your check stubs, haven't you, that you keep?

587 A. I think so. I don't know for sure if I have them. I think I have.

Q. Well, what raises any doubt in your mind that you have the check stubs for 1917?

A. Well, I have been very loose with my personal business. I didn't keep very good track of that.

Q. Well, you mean by that that you purposely failed to keep stubs showing checks for your \$25,000?

A. No, not personally, no. I make a check out here or make it out somewhere else, and haven't got it in my own office where I have my own check book, and that is the way it runs along.

Q. Now, Mr. Zuncker, where did you make out that check, so you think there is any doubt about whether you have the stub?

A. I don't know, sir. I do not know whose handwriting that is in. I thought it was made out in Colonel Foreman's office, but I can't say nothing about it. I have no idea.

Q. If you have no stub for this check it would indicate, would it not, that it was not made out in your office?

A. Not necessarily, no, sir.

Q. Where you make out checks in your own office you sometimes have a stub and sometimes don't?

A. Yes, sir. That is, I don't use the stub. The stub is there, but it is not used. There is no memorandum kept on the stub, what the check was for.

Q. Well, do you customarily draw a check for \$25,000 and not even make a memorandum on your blank check stub of what it is?

A. No, I can't say it is customary, no.

Q. Well, you will bring down, will you not, Mr. Zuncker, every check book of yours, of which you have check stubs covering the period of June and July, 1917?

A. Yes, sir, if to be found.

Q. Now, Mr. Zuncker, you are quite clear, as I understand it, that you didn't sign that check in blank? You are too good a business man, I take it, to sign checks in blank?

A. Yes, sir.

Q. So you are sure it was filled out when you signed it?

A. Yes, sir.

Q. Now, Mr. Zuncker, you heard Mr. Engstrom's testimony that that check was filled out in his handwriting, did you not?

A. Yes, sir.

588 Q. You have known Mr. Engstrom pretty well during the last three years, haven't you?

A. Yes, sir.

Q. And you have seen his handwriting, have you not?

A. No, sir, not that I can say.

Q. What is that?

A. I can't say that, no.

Q. Now, with that testimony in your mind, Mr. Zuncker, I will

ask you whether or not this check wasn't in fact drawn and signed by you in the office of Marcuse & Company at 122 South La Salle?

A. Not to my knowledge.

Q. Well, would you say it was not?

A. I cannot say so, because I don't know.

Q. Mr. Zuncker, when were you first in that office after the 20th of June, 1917?

A. I don't remember, sir.

Q. Weren't you in that office a number of times during the last ten days in June, 1917, looking at the ticker and the quotation board?

A. No.

Q. What?

A. No.

Q. You are sure of that?

A. Yes, sir.

Q. How soon after the 30th day of June, 1917, were you in that office?

A. It is impossible for me to say, but I was in there within the first two weeks, I should judge.

Q. Weren't you in there within the first two days or three days after the 30th of June?

A. I cannot say. I cannot remember.

Q. Mr. Zuncker, it is a fact, is it not, that you and Mr. Vette were in that office from the 30th of June till the 11th of March very frequently and almost constantly?

A. From the 30th of June to the 11th of March?

Q. From the 30th of June, 1917, to the 11th of March, 1920.

A. Frequently?

Q. Frequently.

A. Well, if you explain what you understand by frequently, I can answer the question.

Q. Well, Mr. Zuncker, how often were you in there week in and week out during that period?

589 A. I haven't been there weekly or monthly. I haven't been in every month.

Q. Do I understand you to say you weren't in there on the average of as much as once a month?

A. No, sir.

Q. You say you were not in there as much as once a month?

A. Yes, sir, I would say so.

Q. You would say you were in there three or four times a year, and no more, is that what you mean?

A. I do not think I have been there any more than that.

Q. Through the three years of this period?

A. Yes, sir.

Q. Now, Mr. Zuncker, did you receive statements, inventories, and accounts of that co-partnership?

A. At one time that I was in the office Mr. Marcuse handed me one of their statements, yes.

Q. What time was that?

A. Oh, it must have been the first audit very likely that they had.

Q. That was about September or October of 1917?

A. I should judge so.

Q. You looked it over?

A. No, I didn't. I don't understand it anyway, so I didn't look it over either. I just took it along. He asked me to take it along.

Q. He asked you to take it along. Where did you take it along to?

A. To my office.

Q. Is it there yet?

A. I do not know.

Mr. Platt: Will you produce the statement?

Mr. Miller: Yes, if we can find it.

Mr. Platt:

Q. After that did you receive the next semi-annual statement?

A. No, never had another one. Didn't care for it either. I didn't ask for that one.

Q. Mr. Zuncker, when did you receive the first payment from the profits of Marcuse & Company?

A. I can't recollect. In the regular course when everybody else got the check that had any certificate in this trust.

Q. You received in December, 1917, a check from the Chicago Title & Trust Company for \$750, didn't you?

A. If the records so show, yes.

590 Q. Well, now, what is the fact, without regard to what the records show?

A. I don't remember. I can't tell you these figures or dates. I don't remember. I got in the course of time, I got the checks from the Chicago Title & Trust Company, and I don't deny that I did get them, so whatever the dates are or the amounts are, why, I agree with you what they claim I did get.

Q. You know the amount of the checks, don't you, you used to get?

A. No, sir, I don't keep track of them.

Q. You don't know what percentage you were getting on the \$25,000 that you were investing?

A. I remember about the percentage. I think the first percentage was six per cent, and finally we got ten. That is as much as I remember.

Q. You knew very well, didn't you, Mr. Zuncker, from the time you turned over this check, June 30, 1917, that you were guaranteed six per cent per annum on your investment? You knew that all the time, didn't you?

A. I knew I was guaranteed six per cent on my investment by the trust papers, yes.

Q. Whom did you think was guaranteeing you that six per cent?

A. Hecht and Finn.

Q. That was your idea, was it?

A. Yes, sir.

Q. That they personally owed you interest at the rate of six per cent per annum on that \$25,000?

A. Yes, sir.

Q. That was your understanding?

A. Yes, sir.

Q. Whether Marcuse & Company made it or not?

A. Yes, sir.

Q. Who was it, Mr. Zuncker, among the lawyers that represented you who told you that?

A. I could't say. It was my own belief.

Q. Well, now, you say you didn't read this over; this Hecht-Finn agreement, because you wouldn't understand it, is that right?

A. Yes.

Q. Except slightly?

A. Yes, sir.

Q. So that what you thought about what was in this agreement was based upon what either Robertson or Foreman told you, wasn't it?

A. Yes, sir.

Q. Now, which one of them, Robertson or Foreman, was it that told you that Hecht and Finn were bound to pay you six per cent per annum, whether Marcuse & Company earned it or not?

A. I don't know if either one has told me. Only it was my belief I would get six per cent.

Q. One or the other of them must have told you that, if you had any belief, and didn't read the document, and got what you knew about it from them, is that correct?

The Witness: Will you repeat that question, please?

Mr. Platt: Read the question, please.

(Question read.)

A. No, I believe I got the six per cent out of the document, if I remember right. I can't say that no more.

Q. Then at the time you turned over the \$25,000 you hadn't seen the document, had you?

A. I had already seen some of the documents in preparation before that time.

Q. Tell us about the documents you saw in preparation, and when you saw them?

A. I can't say if it was before that time that they had—Mr. Foreman and Mr. Robertson, they were in the office, and they said to start out—how this thing came out, Mr. Stein—Mr. Foreman told me Mr. Stein came to his office and wanted for his clients to invest in some kind of a trust agreement, and I told Mr. Foreman that I didn't want to go into anything at all which would bring me into the company again, and he said to me, "You can rest assured that if we pass on anything it will be all right, and you will have no responsibility or anything else. You have nothing to do with the Company at all," and then this here thing went along until I finally was told that I was absolutely clear of the company, and if I

invest my money in it it would be outside of the company, and I had nothing to do with the company, and for that reason I bought the certificate.

Mr. Platt: I move the answer be stricken out as not responsive, and I again ask the witness.

The Court: Strike out the answer. Answer the question.

Mr. Platt:

Q. When was it you saw these documents in preparation, and who showed them to you?

A. I cannot say I did see them at any time in preparation. I was only told that these documents were in preparation. Mr. Stein tried to bring up some trust agreement for certificates to be sold off, and that they would look them over, and they had some agreement which didn't suit some of the other parties—I believe Studebaker was mentioned—and they would work the thing together or do something of the kind to finally come to some arrangement whereby it would be O. K.

Q. Now, Mr. Zuncker, you were trying to tell me where you got that six per cent in your mind. That is what you were trying to tell me.

A. Yes, sir.

Q. That is the object of this examination at this minute.

A. Yes, sir.

Q. Now, you say you got it out of the papers, you thought, and then I asked you if you had seen those papers before you sent this check, and you said you had seen some of them in preparation. I do not—I am just alluding to this to get your mind back to this examination. Do you remember that?

A. It may not be they were shown to me in Colonel Foreman's office. I don't know for sure no more. The attorneys, they ought to know better than I do.

Q. It may be, then, Mr. Zuncker, that this paper, which is your copy, as your counsel tells you, of the Trust agreement—it may be that was shown to you in Foreman's office, is that right, before the 30th of June?

A. That may be so, yes, sir.

Q. And then you took and read it there, did you?

A. I tried to read it until I got disgusted with it, because I couldn't remember the things on there anyway, so I gave it up.

Q. But some way or other you got six per cent in your mind?

A. Yes, sir.

Q. And somehow or other you got the idea that Hecht and Finn were going to pay you that, whether they got it or not, is that right?

A. I was under the belief I was to get it from Hecht and Finn, yes. I got six per cent anyway. That is my belief. But if Hecht and Finn got more money through their investment in Marcuse & Company I would get more than six per cent. That was my belief at the time.

Q. Mr. Zuncker, immediately after the 30th day of December,

1918, you got a check for \$1,000 direct from Marcuse &
593 Company, without any intervention of the Chicago Title &
Trust Company, as Trustee, did you not?

A. I can't say that.

Q. What?

A. I can't say that. I have no record, complete.

Q. Mr. Zuncker, did you not receive a check from Marcuse &
Company for four per cent on your investment shortly after the
30th day of December, 1918? Not the check of the Chicago Title
& Trust Company, or the check of Hecht and Finn, but the check
of Marcuse & Company? And didn't you endorse your name on
the back of that check and deposit it in your bank?

A. I am not sure, but the check is the best evidence.

Q. Oh, you don't understand these legal documents and legal
terms, is that right, Mr. Zuncker?

A. Oh, I know a check.

Q. You know a check, and you know it is the best evidence.
Now, Mr. Zuncker, did you receive a check from Marcuse & Com-
pany?

A. Not that I remember.

Q. Would you say that you did not?

A. I wouldn't say that, no.

Q. Well, now, Mr. Zuncker, I want you to tell me everything
you know in response to questions I ask you, and you are under
oath.

A. I gladly do.

Q. You say you do not know whether you received a check from
Marcuse & Company?

A. No., I do not know if it was Marcuse & Company or the Title
& Trust Company. I couldn't tell you. Nor I do not know the
amount of the check or the time.

Q. Let me get your attention to the 30th day of December, 1918,
and thereafter during the whole of the year 1918. You thought
you had nothing to do with Marcuse & Company, is that right?

A. Yes, sir.

Q. If you received a check from Marcuse Company then you
wouldn't know why it came, would you?

A. I can't answer that question.

The Court: I will ask you to answer the question. Suppose you
received a check for that amount of money—

The Witness: Yes, sir.

The Court: —about the 1st of January, 1918—1919—a
594 check of Marcuse & Company for that amount, would you
at that time have known what it was for?

A. No, only that I would have said to myself, "It is for money
that the Company has earned." They pay it to us, that is all.

The Court:

Q. Why pay it to you?

A. Directly—outside of the six per cent that Mr. Hecht and
Finn—

Q. Why to you? You had no investment in Marcuse & Company.

A. No.

Q. Why pay it to you?

A. I don't know.

Q. What?

A. I don't know. I couldn't answer the question.

Q. You would send the check back and tell them it was a mistake?

A. No.

Q. No?

A. No, sir.

Q. Why not?

A. I thought maybe a mistake of Hecht and Finn, that they perhaps paid the money to Marcuse & Company or some other way. I do not know. I couldn't explain that.

The Court: Go ahead.

Mr. Platt:

Q. Mr. Zuncker, you had a very active account, trading account, in Marcuse & Company, did you not?

A. I did.

Q. When did you first open that account?

A. When they started in business.

Q. Mr. Zuncker, you used to receive statements from Marcuse & Company on your trading account, didn't you?

A. Yes, sir.

Q. When was the first statement you received?

Mr. Miller: That is not cross-examination of anything that has been gone into.

Mr. Platt: It is getting down to proof of some matters.

The Court: Go ahead.

Mr. Platt: When did you first receive your statement from Marcuse & Company?

A. I should judge five or six weeks after the beginning of the business?

595 Q. Well, you received it immediately after the 1st day of July, 1917, did you not?

A. June or July. What date was that you mentioned?

Q. Immediately after the 1st day 1917; that is, they sent you a statement for your June dealings, trades, didn't they?

A. I had no June dealings that I remember of.

Q. All right. For your August then?

A. I should judge so, yes, sir.

Q. Have you got that statement?

A. I think I have all my statements.

Q. Will you bring down all those statements?

A. Yes, sir.

Q. Now, Mr. Zuncker, you used to go over those statements every

time you received them to see whether they were correct, did you not?

A. No, sir.

Q. Oh, you didn't?

A. No.

Q. Didn't you pay any attention to them?

A. I just looked at the amount, what I owe, and that was all, to see that they credit me what I paid. That was the general way.

Q. And to see what your credits were, did you not?

A. If I didn't do any trading at all I didn't look at them either, because they must be the same.

Q. Now, Mr. Zuncker, you knew, didn't you, that Hecht & Finn, as Trustees in that trust, were subject to the direction of a majority of the certificate holders?

Mr. Miller: I object to that. The document itself shows.

The Court: It doesn't show his knowledge. Objection overruled. Answer the question.

Mr. Miller: I object to that upon the further ground that he assumes that that is what the document does say, and he hasn't any right to assume that.

The Court: Objection overruled. Answer the question.

The Witness: I forgot the question.

The Court: Put your question.

Mr. Platt: Read the question, please.

(Question read:)

Mr. Miller: Just a moment. There is another thing I would like to add to that objection, but I do not want to state it in the presence of the witness.

Mr. Platt: I am willing that the question be objected to
596 on any ground, as far as I am concerned, which Mr. Miller may wish to urge.

The Court: You can put it in after -while. Whisper it into the ear of the prothonotary.

Mr. Miller: I do not want a false assumption in here.

The Court: This is the same document read to me, isn't it, on the former argument?

Mr. Platt: Yes, your Honor.

The Court: Go ahead.

A. No, sir.

Mr. Platt:

Q. Don't you know, Mr. Zuncker, that if Finn and Hecht died while Marcuse & Company was in operation you and Vette and Hoffman and Regensteiner, or any of you holding a majority of those certificates, could appoint new trustees to represent you in the operation of the Marcuse Company special partnership?

Mr. Miller: Now, I object to that as a false assumption, because that isn't true. He can't find anything in that—

The Court: That is good. There is no word "trustee" in here, as I remember.

Mr. Miller: And that is what I had in my mind a moment ago.

The Court: He wasn't talking about trustees a moment ago. He used the word "control."

Mr. Miller: But he based that on what was in the document, and that isn't true.

The Court: Well, there was enough of it that was true.

Mr. Platt: Let me read this, if your Honor please.

The Court: Yes.

Mr. Platt (reading):

"In the event of the death of either of the trustees, the survivor trustees shall forthwith succeed to all the rights, duties and obligations herein contained, and to all the right, title and interest of both trustees as special partners in said co-partnership."

The Court: Well, go ahead. I forgot that.

Mr. Miller: You haven't read it all yet.

Mr. Platt: No.

(Continuing reading:)

"And shall act in the place of both of said trustees with like force and effect as if such surviving trustee had been the sole original trustee hereunder. In the event of the death of the surviving trustee, then the holders of the certificates, representing a majority of the shares, by an instrument or concurrent instruments in writing
597 ing signed by such certificate holders, shall designate a successor trustee, acceptable to and approved by the general partners, and such successor trustee shall forthwith become a special partner in such co-partnership business in the place and stead of the deceased surviving trustee, and shall forthwith succeed to all the rights, duties and obligations herein contained, and to all the right, title and interest of the original trustees as such partner in such co-partnership, with like force and effect as if such appointed trustee had originally been the sole trustee hereunder."

Mr. Miller: My point is this, "acceptable to the general partners," that means nothing more than——

The Court: Regardless of what it means, the question is perfectly proper, and I do not want to hear it again in the presence of the witness.

Mr. Miller: I have stated to you——

The Court: I have your objection.

Mr. Miller: I indicated to you a minute ago I wanted to make a point, but I didn't want to make it in the presence of the witness.

The Court: You have your point in. The question is a perfectly proper one.

Mr. Miller: Let us have the question read.

The Court: If the witness was a deaf person, or if the witness was non compus mentis, or was in a state of chronic and permanent inebriety, your objection would be good, but in view of this witness being an ordinary human being, of ordinary intelligence, and in

view of these papers showing what he himself has signed up to, the objection is not good.

Mr. Miller: But his question is based upon a false assumption as to what that document means.

The Court: He is cross-examining a witness here. I think the objection is not good against the question. Now, put your question.

Mr. Platt: Will you read the question, please?

(Question read.)

A. No, I don't.

Q. Didn't know that at all?

A. No, sir.

Q. Hadn't discussed that phase of this agreement with Colonel Foreman or with Mr. Robertson?

A. No, sir.

598 Q. Didn't know anything about what your interest in Marcuse & Company would be if Hecht and Finn died, is that right?

A. No, I didn't—I was under the impression at all times that I had no interest whatsoever in Marcuse & Company at any time or state of this here business.

Q. Mr. Zuncker, did you have an impression that you had no interest in the profits earned or supposed to be earned by Marcuse & Company?

A. Yes.

Q. Well, now, what do you mean by that answer? That you had no interest or you had an interest in the profits?

A. I knew that my interest would come from the interest of Hecht and Finn, as in an indirect way, through these trust certificates, and that is the only way I knew.

Q. Mr. Zuncker, you knew if Marcuse & Company made more profits and paid more interest and dividends, that you would get more money, didn't you?

A. I knew that the Hecht and Finn would make in their investment—

The Court: Just a moment. Read the question. Now, listen to the question.

(Question read.)

The Court:

Q. Do you understand that question?

A. I think I do.

The Court:

Q. Will you answer it?

A. Yes, sir.

The Court: All right.

Mr. Platt: Did the witness answer it?

The Witness: Yes.

Mr. Platt:

Q. You knew that perfectly well, didn't you?

A. I knew it.

Q. You knew that if Marcuse & Company made no profits, you would get no profit, didn't you?

A. No, I had it in my mind that I would get six per cent on my investment.

Q. Now again I wish you would search your recollection to find where you got any such idea as that in your mind, either by word of mouth, or looking at any paper in course of preparation, or any finished paper or anything else.

Mr. Miller: We have been all over that.

The Court: He may go back to it.

599 A. I got my knowledge in Colonel Foreman's office, to the best of my recollection; either by looking through the paper or otherwise, I don't remember which way.

Mr. Platt:

Q. Now, Mr. Zunker, how often had you seen Mr. Marcuse, Ben Marcuse, who I believe is somewhere in the court room, between the 3rd of April and the 30th of June, 1917?

A. Maybe twice, three times.

Q. You had seen him up in Colonel Foreman's office, hadn't you?

A. No, not after April 2nd; I don't think so.

Q. Mr. Zunker, isn't it a fact that Marcuse came to you and explained to you that the agreement that you had signed, dated April 2nd, could not go through because of the objection of the New York Stock Exchange, but that his lawyers and your lawyers had framed the thing up so that the same *steal* could be carried through in another way, or words in substance amounting to them?

A. No, sir.

Q. Didn't he go up with you—didn't you meet him by appointment at Colonel Foreman's office, and didn't Colonel Foreman in Marcuse's presence tell you substantially the same thing?

A. No, sir.

Q. Mr. Zunker, didn't you meet Mr. Hoffman in a conference between the 3rd of April and the 30th of June, 1917, in Colonel Foreman's office?

A. Not to my recollection.

Q. Well, do you remember whether you did or not?

A. I can't remember, no.

Q. Didn't you meet Grollman and Regensteiner in Colonel Foreman's office between the 3rd of April and the 30th of June?

A. No, not to my recollection I did not.

Mr. Platt: If your Honor please, I would like to postpone the rest of this examination until I have this check stub and Mr. Zuncker's statement, because I think I can shorten it.

The Court: All right.

Mr. Jacobson: We offer in evidence, may it please the court, the original journal of the Clerk of the United States District Court for the Northern District of Illinois, Volume 41, page—date, Wednesday, June 13th, A. D. 1917, and ask to read in the record
600 the order that there appears with respect to the dismissal of the proceedings in bankruptcy against the estate of Von Frantzius.

The Court: Go ahead.

Mr. Jacobson: And there will be furnished for the record a copy of the order.

The order referred to is as follows:

Wednesday, June 13, A. D. 1917.

No. 25669.

In re FRITZ VON FRANTZIUS and BEN MARCUSE, Copartners, Trading as Von Frantzius & Co., Bankrupt.

This matter coming on to be heard on the petition of the petitioning creditors to dismiss the petition for adjudication and all proceedings had thereunder, come the petitioning creditors, come also the bankrupts, and it appearing that due and legal notice of the hearing of said petition at this time has been duly given to all creditors, and no one appearing in opposition to the granting of said petition to dismiss, it is ordered by the Court that the petition for adjudication heretofore filed herein, together with all proceedings had thereunder, be and the same is hereby dismissed.

EMERY ILIFF, called as a witness on behalf of the petitioning creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. What is your name, please?

A. Emery Iliff.

Q. Where do you live, Mr. Iliff?

A. 824 Dakin street.

Q. And where are you now employed?

A. With Robinson & Pfaff Company, 104 South Michigan avenue.

Q. Were you ever employed in the office of Marcuse & Company, 122 to 126 South La Salle street?

A. Yes, sir.

Q. In what capacity?

A. As assistant order clerk, and I was secretary for Mr. Lew Morris for a time being, a short time.

601 Q. When were you employed there?

A. During the middle and the latter part of 1919 and the first part of 1920.

Q. Do you remember when you first started working there?

A. I think it was in July, 1919.

Q. And did you work there continuously until March 11, 1920?

A. I did, sir.

Q. Do you know Frank A. Hecht, Sr.?

A. The Mr. Hecht that was interested with Marcuse?

Q. Yes.

A. Yes, sir.

Q. Have you seen him there often?

A. Yes, sir.

Q. During the period between July, 1919, and March 11, 1920, state whether or not you saw him there daily?

Mr. Platt: I think the question should be how often he saw him, Mr. Jacobson.

Mr. Jacobson: All right.

Q. How often did you see him there between those two dates?

A. I don't know how often I saw him, sir; it was,—oh, every day or so I would see him in the office.

Q. What time in the morning did he come into the office?

A. Sometimes around about—ten o'clock.

The Court: Who is this?

Mr. Jacobson: Hecht.

Q. And how long would he stay, if you know, generally?

A. Oh, I have never noticed how long he stayed; sometimes two hours, sometimes one hour, maybe three hours.

Q. Now, when he came into the office, what, if anything, did you see him do?

A. Well, he nearly always would look for Mr. Marcuse, the first thing, when he would come into the office.

Q. Talk to Mr. Marcuse?

A. Yes, sir.

Q. What else, if anything.

A. Well, he would talk to the solicitors there.

Q. The men that were taking orders on the floor?

A. The men that were taking orders, yes; he would talk to them.

The Court: They call those men the solicitors?

A. The solicitors, such as Peabody and Schroeder.

602 Mr. Jacobson: Solicitors or brokers.

Q. Do you know what he discussed with them in your presence?

A. Supposed to influence customers to buy stock.

Q. What if anything did he discuss with them, if you know, if it occurred in your presence?

A. I don't think I remember that. He would ask how the market was going.

Mr. Platt: I don't desire to interrupt unnecessarily, your Honor——

The Court: He came in there, I suppose, and got reports from the track, didn't he?

A. Yes, sir.

Q. Kept track of ponies?

A. Well, as to what I know of it, yes, sir.

The Court: Go ahead.

Mr. Jacobson:

Q. What else did he keep track of besides the matters mentioned by Zunker?

A. Why, he would give me orders to buy and sell stock.

Q. Yes, but did he keep track of quotations on the board with reference to the prices of stocks, if you know?

A. No, sir, I don't know.

Q. Did he discuss in your presence the quotations of certain stocks at different times?

A. I don't remember that.

Q. Now, state whether or not you saw Mr. Hecht discuss matters with customers?

A. I saw him talking with customers, yes, sir.

Q. Did that happen frequently?

A. Yes, sir.

The Court: Well, now, what does that prove?

Mr. Jacobson: It is preliminary, your Honor.

The Court: Although I am a judicial officer, I have a memory as a citizen of having occasionally dropped into a broker's office, and you see this bunch of fellows who call themselves traders, who affect to be traders, sitting around, nodding wisely, talking out of the corner of their mouth to each other about this thing that is being exhibited on the board. Now, suppose this fellow was in there doing it? What of it? Shirtwaist common, or shimmy preferred, and all that stuff? Suppose he did, what of it?

Mr. Jacobson: The question I am putting is preliminary to another matter that is germane to this issue.

The Court: Well, now, my idea about Hecht and Finn is 603 this, and I have indicated it perfectly plainly; unless you want it to bolster up your record; I wouldn't spend much time in this record nailing the lid down on Hecht and Finn. I think you have got them boxed up. Now, that is my judgment here, and you can bring these fellows, these solicitors, these markers, for months to give evidence of Hecht whispering into the ear of some fellow, and Finn talking to somebody and I don't think you are going to help your case against them a bit.

Mr. Jacobson: Your Honor, I then make my offer to prove, and

then your Honor can sustain an objection to it, and in that way wo will have the record in shape. It will not be very long.

Mr. Platt: I object.

The Court: Your offer to prove is not based on anything except this kind of stuff.

Mr. Jacobson: There is one amendment. Perhaps we can settle it.

The Court: I simply don't want to spend useless days here on inconsequential generalities.

Mr. Jacobson:

Q. Mr. Iliff, you said before that Mr. Hecht gave you orders. Just explain what you mean by that statement.

A. Why, he would give me orders to buy and sell a certain stock, for he himself personally, that is, for his account; he had an account there, I suppose, but the orders, sometimes they would be signed, or he would give them to me and tell me to buy one hundred shares of this or a hundred shares of that, or to sell this or that.

Q. Now, at that time you were the assistant order clerk?

A. Assistant order clerk, yes, sir.

Q. In the regular course of business of Marcuse & Company who would give you orders?

The Court:

Q. How would an order come to you? If John Jones, a customer, came in there and wanted to buy 500 shares of Little Mono, how would that order get to you?

A. He would give it to the salesman and he would give it to me, or else the man would come himself to the window.

Q. The customer personally?

A. Yes, sir, the customer personally.

Mr. Jacobson:

Q. Now, tell if Mr. Hecht ever gave you orders to buy stuff for other person- than for Frank A. Hecht, Sr.?

604 Mr. Platt: We will admit Mr. Thayer was his brother-in-law, and that his son opened an account there, and that his son's wife might have opened an account there. They were all on the books, and I haven't any doubt Mr. Hecht carried margins and gave orders on those accounts. I do not know what counsel has in mind, but I will shorten it up by admitting that freely.

Mr. Jacobson: Others than Mr. Thayer.

The Court: Others than Mr. Hecht's family.

Mr. Platt: Yes.

The Witness: I don't remember, except Mr. Hecht.

Mr. Jacobson:

Q. State whether or not you heard Mr. Hecht give instructions to anyone, outside of orders, to buy and sell stock?

The Court:

Q. Did he boss the fellows around there, as though it was his place?

A. I never heard him boss them around, sir.

Q. Did you ever see him do anything that looked as though Hecht thought he was a little different from what John Jones, a customer, was in there,—as though he was in his own place?

A. All of the employees knew he was one of the partners there, and they treated him as such.

Mr. Jacobson:

Q. State whether or not you heard Mr. Hecht at any time make any statement to Mr. Marcuse with reference to the way the salesmen or board markers were working there?

A. I remember at one time that Mr. Hecht and Mr. Marcuse were standing beside the file case. I was beside the order clerk's desk, and I happened—I was there, and they were talking something about the salesmen.

Q. What did Mr. Hecht say, if anything, to Mr. Marcuse?

A. I don't remember that, sir; I don't know that conversation, because I didn't hear exactly what they were talking about, but I know it was about something about the tickers.

The Court:

Q. Why?

A. Because there was a notice went up, well, a few days later than that, about the salesmen—about everybody staying away from the ticker, and we heard Mr. Hecht talking about them being around the ticker, but as to exactly what he said, sir, I wouldn't say under oath, because I don't know exactly what he said.

The Court: I don't think you make much headway on this, because in the good old days there used to be a lot of chair-
605 warmers sitting in front of the board; they rather bossed that room.

Mr. Jacobson: Then I will withdraw this witness.

The Court: In the good old days; I remember that very distinctly. We all had votes in there.

Mr. Jacobson: I will excuse Mr. Iliff. I want to read now, this morning, and under the same conditions as was read yesterday, from the transcript of the testimony given by Mr. Theodore Regensteiner at a hearing before your Honor on March 29, 1920.

The Court: In the same record?

Mr. Jacobson: Yes.

The Court: For the respondent, as was made yesterday?

Mr. Jacobson: Yes.

The Court: Do you want to add anything to that record for your client?

Mr. Platt: No.

Mr. Jacobson: I thought we could save time and assume it has been read into the record.

The Court: Go ahead.

Mr. Jacobson: If counsel will admit it is read, we needn't spend the time to read it, and you can later check it back.

Mr. Miller: There may be questions in there and answers in there that I want to object to, and things I want to move to strike out.

The Court: Go ahead.

Mr. Jacobson: I am reading now from a transcript which has been admitted to be a correct transcript of evidence given by Mr. Theodore Regensteiner at an examination, before his Honor, Judge Landis, conducted by him, on March 29, 1920. Mr. Regensteiner was first duly sworn and examined.

"The Court:

Q. What is your name?

A. My name is Theodore Regensteiner.

The Court: Give me that agreement that you say you have.

(Mr. Moses handed a document to the Court.)

The Court:

Q. What is your business?

A. I am in the printing business.

Q. Have you a partner in that business?

A. I have, yes.

Q. What is his name?

A. Well, it is a stock company. There are several people interested in it.

Q. Is it a corporation?

606 A. It is a corporation, yes, sir.

Q. Who are the rest of your brethren in that corporation?

A. Timothy R. Grollman is one of them.

Q. Well, is a man named Hoffman, or a man named Vette, or a man named Zuncker, or a man named Studebaker in there with you?

A. No, sir.

Q. Did you ever hear of a man named Marcuse?

A. I did, sir.

Q. Were you ever in business with him?

A. Well, I have been connected with him, not directly with Marcuse & Company, but with some of Marcuse's special partners.

Q. Did you know Marcuse?

A. I did, on account of doing business with him.

Q. Well, you knew him?

A. I knew him, yes.

Q. What kind of a looking man is he?

A. Well, he is a rather short man, I would say. I think he has got a little beard, a little short black mustache, I think.

Q. Is he here now? Is Marcuse here?

Mr. Wormser: No, your Honor.

The Court: Now, you say you have some connection with him?

A. Well, in an indirect way. Well, both friend and business.

Q. Were you ever in his place?

A. Yes.

Q. Where was it?

A. On La Salle Street, South La Salle Street. I think it is the Corn Exchange Building, if I am not wrong.

Q. How long has he been there in that place?

A. How long has he been there?

Q. Yes?

A. Well, he was formerly a partner of Von Frantzius and Company. That is the first time I met the man. That must be, I imagine, possibly five years ago.

Q. And from that time on to this time, has he occupied the same quarters?

A. He has.

Q. And you say you have been there, have you?

A. I have been there numerous times.

Q. What is that business?

607 A. Well, as I understand it, it is a brokerage business.

Q. That is, buying and selling stock and bonds?

A. Buying and selling stocks, yes.

Q. Grain?

A. Yes, I guess so, although I had no experience in that line, only in stocks.

Q. You never bought any grain?

A. I never did, no, sir.

Q. Have you purchased stock and sold stocks and bonds there, through him?

A. Yes, both.

Q. About how many times a year, during the last five years, Mr. Regensteiner, have you been in that place of business?

A. Oh, well, five years; I would say possibly between forty and fifty times.

Q. Now, you have some connection with him indirectly?

A. Yes, I was asked—may I state in detail?

Q. Yes, tell me the whole thing.

A. I was originally introduced to Mr. Marcuse through a man whom I met at a summer resort.

Q. Who was it introduced you?

A. Mr. Hohenberg, a salesman.

Q. A salesman of whom?

A. Of this company.

Q. Of Marcuse?

A. No, Von Frantzius and Company.

Q. He introduced you to—

A. Marcuse.

Q. To Marcuse?

A. He asked me to do some business with him."

Mr. Miller: The conversation that took place, I object to as immaterial.

Mr. Jacobson: We will withdraw that.

Mr. Platt: It would not be material as to Mr. Regensteiner.

Mr. Miller: Yes, immaterial as against Mr. Regensteiner, and of course, not admissible against anybody but Regensteiner.

The Court: He introduced him to whom?

Mr. Jacobson: Mr. Hohenberg introduced him to Marcuse. That is the witness who was here.

Mr. Miller: He is proceeding to detail a conversation that he had with a man named Hohenberg at one time, about doing some trading with Marcuse and Company. I say it has no materiality.

The Court: I will let it go in as to the witness; it is no evidence against anybody else.

Mr. Moses: It is admissible only against Regensteiner.

The Court: I say, let it go in as against him. As to him, whether against him or for him, as to him it is admissible.

Mr. Jacobson (reading): "A. He asked me to do some business with him, and he finally got me to buy a few stocks, and from that I bought more stocks, and some of them I purchased outright, and some of them stocks I only had them in margin, because from time to time I took some of the stocks and paid for them, and had them issued in my name, and then approximately two years or so, a little over two years ago, I think, Mr. Von Frantzius suddenly died and the estate became badly involved and I believe, went into the hands of receivers, and Mr. Marcuse then tried to get hold of the assets of that company.

Q. Yes?

A. And he talked to me about it, and I was approached by several parties, that I should invest some money into that business, and two or three times I turned it down cold blooded.

Q. Who approached you?

A. Who approached me?

Q. Who was it approached you?

A. The first man, I guess, was Mr. Hohenberg, himself, the man that originally introduced me, and I said, "No, I don't want to be connected with any brokerage business. I need the money in my business, and from time to time, if I have got any money that I pull out, I want to invest it and put it away in my vault and forget about it." Then the matter was called to my attention the next time by my partner, Mr. Grollman. He said that he was approached, I think, through his brother, who was an attorney, that it might be a very good investment. I said, "Well."

Q. What might be a good investment?

A. To help Mr. Marcuse again to get on his feet. He wanted again to get on his feet, and the point was this: After I finally took a little interest in it, the only thing that appealed to me was the possibility of eventually paying back all his indebtedness, partly to myself, as I was a creditor, and also to the rest of the creditors.

Q. You were a creditor of Von Frantzius?

A. I was a creditor, and the case appealed to me. Then
609 the third party then spoke to me, and Mr. Marcuse called
up once or twice on the telephone and said, "I would like to
talk to you." I said, "What is it about, Mr. Marcuse?" "Well,
then," he said, "I can explain it better to you in person." I said,
"I am a pretty busy man. Can't you give me an inkling of what it
is?" "Yes," he said, "I want to talk to you about putting some
money in my business." I said, "You know I am not interested in a
thing like that. I have got my hands full. I am a busy man. My
business is complicated." He said "Give me five minutes. I have
known you a long while. I would like to talk to you for five min-
utes." I said, "All right, come over; I will talk to you for five
minutes." Well, it was more than five minutes.

Q. You went over to Marcuse?

A. No, he came over to my place. He said, "Well, now, I have
got a chance to take over this business. There is lots of business
there, lots of clients."

Q. Lots of clients?

A. He had lots of clients, a pretty big trade there. He said, "I
think most of the people will stick to me, if I go back into business,
and we can buy the fixtures and everything very cheap. There is a
chance to pay all the creditors back, and I think I can get the com-
pany's money back, and if you get in on it, it will be a good income
on this thing, and as I stated before, the thing appealed to me about
him working himself out and cleaning up for the rest of the creditors,
myself included, that naturally, and the way he explained it to me, I
didn't think there was a chance to go wrong on it. That is, it looked
as a fairly legitimate enterprise in the way of taking a fair return of
the investment.

Q. What was it that caught your eye? Just what thing in this
was it that attracted your eye, that you have now in mind?

A. The main thing that attracted my eye was the fact that he was
given an opportunity to pay back the indebtedness of the old creditors.
He was very anxious to do that, and to get that off his mind. He
felt that, though he claimed it was no fault of his, that he was—

Q. He was not responsible for Von Frantzius?

A. Well, he said that Von Frantzius did these things without his
knowledge, and when he did find out, that he objected."

The Court: Von Frantzius is dead.

610 Mr. Jacobson: Yes.

The Court: Go ahead.

Mr. Jacobson (reading): "Q. Now, let me ask you: Did you
finally go into any sort of—did you make a contribution to his busi-
ness?"

A. Well, the matter was explained to me and I said, "Well, I
might be interested in that." And then he went to New York and
he found out that they were not incorporated there, the new firm
couldn't be incorporated. He says, "The laws of the New York
Stock Exchange are such that only the partners can operate or do
business with the New York Stock Exchange."

Q. Yes?

A. And then it was agreed amongst a number of attorneys that a special partnership, with what you call——

Q. Limited liability?

A. Of limited liability.

Q. Partners who would get the assets, get a division of the dividend, but pay no debts. Now, who were the parties that got together and had this conference?

A. Well, sir, I think.

Q. You understood that was the benefit you would get from being a special partner, didn't you?

A. It amounted to the same thing as a corporation.

Q. That is, it was a cinch against paying any debt?

A. Oh, no.

Q. Did you think you would have to pay the debts?

A. What debts do you mean, of the old company?

Q. No, the new company, Marcuse & Company.

A. Well, they had no debts.

Q. Well, but in the turn of the wheel——

A. You mean of the new enterprise?

Q. Or month after month, if the market went against him?

A. Yes.

Q. And he got his money on the wrong horse some day, and the thing went against him, this thing that you were going into, if it got into debt, did you understand you didn't have to pay anything?

A. I understood it to be exactly the same as a corporation.

Q. You were to pay in your money, and if it got into trouble you would have to pay back your subscription?

A. That is my understanding.

Mr. Miller: No.

The Court: Would not.

611 Mr. Miller: So that if you got into trouble you would not have to pay anything above it?

Mr. Jacobson: I accept the amendment.

The Court: What are you reading from?

Mr. Jacobson: From the transcript of the stenographer.

"I didn't realize that there could be such a thing as a loss, the way I understood the business. I thought it was just such a commission business, that you might fall behind in if you didn't make a sufficient amount of expenses, so far as your rental and salary is concerned, but that the statements from month to month would keep you absolutely posted.

Q. Let me ask you, Mr. Regensteiner: Who were your associates in this enterprise,—Mr. Marcuse and Mr. Morris and who else?

A. Well, the way it was, I was further told, it came out that we could not be partners in there except—that is, only people that were retired from business or not connected with any other enterprise, business enterprise, could become special partners, therefore I could not be a special partner.

Q. Who told you that?

A. Oh, I couldn't say. I don't believe I could.

Q. Did you have a lawyer?

A. Yes.

Q. Who was it?

A. Mr. Louis Grollman.

Q. Did Mr. Grollman tell you that?

A. Well, it was a discussion.

Q. Louis Grollman never told you that? He never told you that, that a man couldn't be a special partner unless he had retired from business?

A. Well, I couldn't tell you who the party was. It was told to me somehow, either in one of these discussions, or somehow.

Q. You had not retired from business, had you?

A. No.

Q. You joined them, didn't you?

A. I understood a man who was in business couldn't be a partner in a brokerage business.

Q. When was it you got that understanding?

A. Well, during the negotiations.

Q. About when? Can you tell me a little more definitely? Did you have that at the time you signed up with these other men, that understanding?

A. When I signed up I had that understanding.

612 Q. Now, who were your associates in this, besides Marcuse and Morris?

A. Well, I knew that Mr. Finn was interested in it.

Q. Anybody else?

A. And Mr. Hecht.

Q. And who else?

A. And my partner, Mr. Grollman, I guess is somewhat. He put up some money.

Q. Who else?

A. Well, that is all I can recollect.

Q. Did you know a man named Hoffman? Is Mr. Hoffman here?

Mr. Hoffman: Yes.

The Court: Do you know Mr. Hoffman?

A. I can't quite see that face."

Mr. Miller: "That far."

Mr. Jacobson: I accept your amendment.

"Have him step a little closer. I am a little bit short-sighted.

The Court: "Will you come over here, Mr. Hoffman, and let Mr. Regensteiner see you. Do you know Mr. Hoffman?

A. I do not believe, your Honor, I have the pleasure.

Q. Well, anyhow, you signed something, did you, after a while?

A. Yes, sir, I did.

Q. Did you invest any money in this?

A. I did.

Q. This thing, whatever you call it?

A. I did.

Q. How much?

A. I think \$18,000.

Q. Who did you give it to?

A. Well, it was a check. I believe it was made payable to Mr. Marcuse, but my recollection is not clear on that. I don't know. It might have been the Chicago Title & Trust Company.

Q. Regardless of who you made it payable to, who did you intend should get the money at the time you drew your check and turned it over? Who did you intend to get the money?

A. I intended that eventually Mr. Marcuse should get the money.

Q. Did you give it to Marcuse & Company?

A. I did.

613 Q. What was the total amount of this fund that you and these other gentlemen got together? You say yourself and Mr. Hecht and Mr. Finn and two or three other gentlemen. Now, what was the total amount of it?

A. Well, it was over a hundred thousand dollars, between one hundred and one hundred and fifty, I think.

Q. Was it about \$190,000?

A. I couldn't say.

Q. Have you ever made a subsequent investment of the same kind in the same business?

A. No, never.

Q. What did Mr. Zuncker put in?

A. I have no idea, your Honor.

Q. Mr. Grollman?

A. I might have known at the time.

Q. What did Mr. Grollman put in? What was his investment?

A. I think \$10,000.

Q. And you drew some dividends, did you, on this?

A. I received some dividends.

Q. How lately did you receive your last dividend?

A. About January 1st.

Q. Of this year?

A. Of this year.

Q. What was the amount in per cent, of that dividend?

A. I think five per cent.

Q. That would make it a \$900 dividend the 1st of January. You say you put in \$18,000?

A. It might be possible. I don't know.

Q. Was it \$18,000?

A. It was \$18,000.

Q. Five times 8 is 40, and five times 1 are 5. That would be \$900.

A. Well, that is my recollection, is the five rather than the nine hundred. I think it was five per cent.

Q. Five per cent the 1st of January, or five per cent per annum, which was it?

A. I think 5 per cent per annum for six months.

Q. You got that money, did you, in the dividend?

A. Yes.

Q. Where did you get it from? Who was the maker of it?

A. I guess the Chicago Title & Trust Company.

Q. Did you understand it came from Marcuse & Company?

A. I did.

614 Q. There was a statement showing earnings, was there not?

A. No, I never got a statement except at his office.

Q. Whose office?

A. Marcuse's office.

Q. Did you have something showing that indebtedness to you on this capital investment?

A. Some kind of certificate.

Q. Where did you get it?

A. I think that was furnished to me, if I am not mistaken."

Mr. Miller: No, "That was mailed to me."

Mr. Jacobson: I accept your statement.

"Q. Where from? Who by? Was it a Marcuse certificate or a Chicago Title & Trust Company certificate?

A. No, I think it is called a Hecht and Finn trust——

Q. A Finn and Hecht trust certificate?

A. Something like that.

Q. And this \$18,000 that you invested in this thing, was that all your investment, or did you make that for somebody else?

A. No, that was my own.

Q. All your own money?

A. All my own money.

Q. Not a representative of anybody?

A. No, sir, my own personal money."

Mr. Jacobson: Now, I would like to read a question propounded by Mr. Moses, and an answer given to that question.

"Q. Did you ever receive a payment in currency at the office of Marcuse & Company?

A. Never.

Q. On this so-called dividend?

A. No, no, not a cent.

Q. Didn't you receive a payment in currency of about \$740 in January, 1919?

A. You mean currency, money?

Q. Yes.

A. Never a penny.

Q. Did you receive a check at the premises of Marcuse & Company at any time?

A. No, they were all mailed to me, mailed, I think, through the Chicago Title & Trust Company."

Mr. Jacobson: That is all we have to offer at this time.

Mr. Platt: There is a further examination by the court.

Mr. Jacobson: There is?

615 Mr. Miller: Oh, yes.

Mr. Jacobson: What page is that?

Mr. Platt: I will hand you my copy.

Mr. Jacobson: I will proceed now to read from the court's examination at that time:

"Q. I want to find out from you, Mr. Regensteiner, the difference between Mr. Finn's situation and Mr. Hecht's situation and yours. Is there any?

A. Well——

Q. Did Hecht or Finn give any directions as to what was to be done with your money?

A. I don't think so.

Q. You called that the Hecht-Finn trust. Why didn't you call it the Regensteiner trust? How did it happen that you were not honored by calling it the Regensteiner trust?

A. Because they were honored by having their name appear on the letterhead.

Q. That is all, is it?

A. Except, as I understood that those two men, being practically out of business, or retired, were the only ones who could become special partners.

Q. You said as I got it a little while ago, that a man in order to be a limited or special partner, had to be a retired man. I don't mean in the sense of being modest, but he had to be out of business?

A. Yes, that is what I understood.

Q. And that is the reason you picked Hecht and Finn?

A. Well, I didn't do any picking.

Q. Marcuse did the picking, and that is the reason why they were picked by somebody, isn't it?

A. I imagine so.

Q. Did you and Hecht and Finn and Mr. Hoffman and Vette and Mr. Zuncker ever have directors' meetings or stockholders' meetings, with a view of deliberating upon the policy of your trust?

A. Not to my knowledge.

Q. Not to your knowledge. You just invested your money and got a trust certificate and some dividends from time to time?

A. Yes, sir.

Q. From what Mr. Marcuse's statements indicated to you, it was a very prosperous and encouraging business to you?

A. I was led to believe so.

Q. Yes.

A. Especially because——

616 "Q. Until you read the newspaper?

A. I got the audit."

Mr. Jacobson: Now I read from the further examination of the witness which was conducted by the court:

Q. You say, Mr. Regensteiner, you had \$18,000?

A. Yes, sir.

Q. Mr. Grollman's name does not appear here. Was it all put in your name?

A. Yes, sir.

Q. That would be \$28,000?

A. It would be that amount, because it was \$18,000 and \$10,000.

Q. Let me ask you, Mr. Regensteiner: In the operation of this thing, after the 2nd of June 1917, were you in any different relation to Marcuse & Company in the dividends which they declared, than Mr. Hecht was, or Mr. Finn was, so far as you know?"

Mr. Miller: That I object to as calling for a conclusion from the witness.

The Court: Overruled.

"A. Well, except possibly from a legal standpoint.

Q. But did he tell you what you understand to be the fact, namely, that all of you could not be limited partners because the New York Stock Exchange rules prohibited that, and therefore you hit on Hecht and Finn as being the two fellows of your crowd that would be the limited partners."

Mr. Miller: I object to that, as assuming that Mr. Regensteiner did hit on Hecht and Finn, and there is no evidence there as to that.

The Court: It may stand.

"A. The way I recollect it was, I was told,—I do not know by whom,—that the original agreement could not be put into effect, and it was agreed that Mr. Finn and Mr. Hecht would be the special partners. I do not believe the matter was discussed in my presence, but it was only submitted to me.

Q. I want to know now——

A. Well, I have no objections to it.

Q. Did you understand that Hecht and Finn were to be advantaged in some way over you?

A. No.

Q. Or that that was the way which it was finally figured out, that that was the way, in view of the rule of the New York Stock Exchange, for Hecht and Finn and you and Hoffman and
617 Vette and Zuncker to carry this program through? Is that what you understood?

A. I understood and took no objection to it when the matter was brought to my attention, because I knew Mr. Finn's and Mr. Hecht's reputation.

Q. You thought they were honest men?

A. I thought they were honest men.

Q. Am I correct in my understanding that you understood that their names were used in that connection, instead of all your names being used, because the New York Stock Exchange rules wouldn't let all your names be used?

A. I think that was the understanding.

Q. We are right that far, are we?

A. That is my understanding.

Q. That they were picked to represent the rest of you men, including themselves, because the rule would not permit all of you to have your names appear? Is that true?"

Mr. Miller: Now, that I object to as calling for a conclusion from the witness, and in no event admissible against anybody, except Regensteiner.

The Court: Overruled.

Mr. Jacobson (reading):

"A. That is my recollection.

Q. And that Hecht and Finn did not stand any differently in this situation then than you and Hoffman and Zuncker, in relation to the benefits to be derived from Marcuse and Company, or the liabilities incurred by reason of your relation to Marcuse & Company. They stood in no different relations—that is, Hecht and Finn stood in no different relation from you and Hoffman and Vette and Zuncker?"

Mr. Miller: We object to that as calling for a legal conclusion, and the understanding of this man must be evidenced solely by the documents which were finally entered into.

The Court: Save your point.

Mr. Jacobson (reading):

"A. I don't suppose so.

Q. That was your understanding?

A. It never entered my mind.

Q. You didn't understand that they were being put in a position where they were carrying your burden, did you?

A. No, no.

Q. That they stood for the crowd?

A. No.

Q. Was that your understanding?

618 A. That was my understanding."

Mr. Miller: "That was not my understanding" is the answer I have got.

Mr. Platt: The answer was, that "it was my understanding." Read the next question and answer and you will see it could not possibly have been otherwise.

Mr. Jacobson: That follows from the context.

The Court: Read the next question.

Mr. Miller: We will see which it was.

Mr. Jacobson: I will read back.

"Q. And they stood for the crowd?

A. No.

Q. Was that your understanding?

A. That was my understanding.

Q. That those two men stood there in a representative capacity for themselves, and you and Hoffman and Vette and Zuncker?"

A. That is the way I understood it.

Q. That is the way you understood it?

A. Yes, sir.

Q. And that solely, as I understand your statement, that if it had not been for the rule of the New York Stock Exchange, all of your names would have been in?

A. Very likely. Of course, it was understood that my name was to be kept out of all that. I did not want my name mentioned.

Q. You did not want your name mentioned at all?

A. I had that understanding in the beginning with Mr. Marcuse. I said I did not want to be connected, or have it known that I have any connection whatever with a brokerage house. I did not think it would improve my standing in amongst my trade, and he said, "Well, that can be fixed so that there is nothing known about it."

Q. You wanted to keep your name out of it because of its possible effect, if publicity was given to the fact that you were in the street, in a brokerage house, and it might hurt you in your other business?

A. Yes, it would give the impression that I was a speculator in stocks.

Q. Somebody might get the false impression that you had to do with fluctuating markets?

A. That is the idea.

Q. So it was therefore fixed up that your name was not to be mentioned?

619 A. Yes, that was the understanding.

Q. What?

A. That was understood."

Mr. Jacobson: I will proceed to read some further questions and answers made by this witness from the record during the examination of Richard Yates Hoffman; for the purpose of showing the connection of the further examination of Mr. Regensteiner, I will read some of the questions put by his Honor at that same examination to the witness, Richard Yates Hoffman.

Mr. Miller: Is that the first time Mr. Hoffman was on the stand?

Mr. Jacobson: No. I will proceed to read, your Honor, the questions as put to the witness, Hoffman, and I read that question for the purpose of establishing the connection:

"Q. Do you recall any other reason than the one suggested by Mr. Regensteiner, namely, that more than two members of a brokerage firm were prohibited by the rules of the New York Stock Exchange from being limited partners, as being the reason why this document here, which you say was signed up and later superseded by another document, which provided for the two limited partners, Hecht and Finn, in the issuance of what you have called the Hecht and Finn Trust Certificate to the various other gentlemen who had originally signed this first document—do you know of any other reason:

A. I think there were others, your Honor, but I do not know them.

Q. Do you recall what they were?

A. No, I don't."

The Court: Mr. Regensteiner, do you remember any other reasons?

Mr. Regensteiner: Than the ones which I stated?

The Court: Yes.

Mr. Regensteiner: I do not.

The Court: You gentlemen, among you, the half dozen or more of you, have heard Mr. Hoffman——

Mr. Regensteiner: I did.

The Court: —discuss the question of going into this business as limited partners, didn't you?

Mr. Regensteiner: Well I understood it that way.

620 The Court: And you signed up a document, the first two paragraphs of which I will read to you, to refresh your memory: 'Articles of Agreement, Made this 2nd day of April, 1917, by and between Ben Marcuse, L. H. Meyers, Frank Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, Witnesseth:

'Whereas, the said parties desire to become partners with one another under the name of Marcuse and Company, under and by virtue of the limited partnership agreement, as hereinafter set forth.'

Now, that set forth your intentions, did it?"

Mr. Miller: Your Honor, need we waste any time showing that on the 2nd of April, when these men all signed that limited partnership agreement, that they contended at that time to form a limited partnership? That is what this goes to. The document shows for itself.

The Court: There are two theories to this situation. You have one and the Court has got a notion of another one. Now, under the other theory, I do not know where or how, but in fairness to the other theory, and the testing out of the other theory, you can say that Mr. Jacobson shall not go on and make an inquiry.

Mr. Miller: This is my point: We are not contending, and we will not contend in argument, that on April 2nd, in this document here, these parties did not intend a limited partnership. The document shows they did, and they are in evidence. This contract shows manifestly what they intended to do.

The Court: Go ahead.

Mr. Jacobson (reading):

"Q. Now, that sets forth your intention, did it?"

Mr. Regensteiner: No doubt.

The Court: And your wishes?

Mr. Regensteiner: No doubt.

The Court: To become partners under this limited partnership agreement?

A. That was my intention.

Q. Sir?

A. Those were the intentions.

Q. Now, Mr. Hoffman tells me, and it is a fact, as I gather it from what these other gentlemen say, that this agreement was in fact signed by you gentlemen, and then you subsequently abandoned that particular paper, and signed another agreement, under which Hecht and Finn became the men named as limited partners. Do you remember that?

621 A. I do not believe I was in one of the meetings when that was discussed.

Q. Well, the Hecht and Finn Trust were arranged and provided for?

A. Yes.

Q. And they were called limited partners?

A. Yes.

Q. Hecht and Finn?

A. Yes.

Q. And they have appeared here as limited partners, that is, they are called limited partners, but you are not called a limited partner in this hearing, neither is Mr. Hoffman; you are called holders of Trust Certificates. Do you remember any other reason than the rule of the New York Stock Exchange, which I am informed prohibits more than two members, or more than two limited partners in a stock exchange, or in a brokerage membership, as being the reason why you abandoned this original contract, and they worked out the Hecht and Finn Trust arrangement? Do you remember any other reason?

A. I do not.

Q. The only thing you remember is the rules of the New York Stock Exchange stood in the way of you and Hoffman and Zuncker, and the rest of these gentlemen being limited partners and you could only have two?

A. That is my recollection."

Mr. Jacobson: I will ask Mr. Regensteiner to kindly take the stand.

THEODORE REGENSTEINER, being recalled on behalf of the petitioning creditors, was examined by Mr. Jacobson and testified as follows:

Q. Mr. Regensteiner, are you the same gentleman who answered the questions that I have just read into the record?

A. I am.

Q. And if the same questions had been put to you today, would you have made the same answers?

A. In the majority of them.

Q. Do you know of any other answer that you made at that time, that you would now make differently?

A. That is kind of difficult to answer, because there were a great many questions asked me and a great many answers I made,
622 and some of the things have come back to me a little more vivid since I have had occasion to see some of these various contracts.

Q. Did you ever take an audit of the books of Marcuse & Company?

A. No, sir.

Q. You say you have got some more recollection since you saw some papers?

A. Yes, sir.

Q. Did you also get some more recollections after you saw the lawyers for the other respondents here, referring to Mr. Miller and the other lawyers involved?

A. No, that did not help my recollection.

Q. Since when did Mr. Miller become your lawyer?

A. Oh, within—I couldn't tell exactly; within the last couple of weeks, I imagine.

Q. Since this matter has been set down for trial on the question of whether you are or are not a partner in this firm?

A. I think so.

Q. And before that time your lawyer had been Louis Grollman?

A. Yes, sir.

Q. Now, did you retain Mr. Miller, or did he volunteer his services for you?

Mr. Miller: Am I on trial?

Mr. Jacobson: This shows the connection. Your Honor, I think it is competent, and we ask leave to prove this connection by Mr. Zuncker's testimony.

The Court: Answer the question.

A. I left it to the judgment of my counsel, Mr. Grollman.

Mr. Jacobson:

Q. Have you paid Mr. Miller any money?

A. Not a cent.

Q. Were you at a conference—

The Court: Aren't you going to pay him anything?

A. No.

Q. Mr. Miller?

A. No.

Q. No money?

A. I left the matter to—

Q. Aren't you going to pay your lawyer anything?

A. Oh, I imagine so.

Q. You imagine so?

A. I suppose I will. The arrangement was made by Mr. Louis Grollman, and I don't know what they are.

The Court: Swear Mr. Grollman.

623 LOUIS GROLLMAN, having been first duly sworn, testified as follows:

The Court:

Q. What is your name?

A. Louis Grollman.

Q. Is George Miller going to get anything from your client or not?

A. He certainly is.

Q. How much?

A. No definite arrangement has been made about that.

Q. When he is going to get it?

A. I suppose when Mr. Miller renders his bill.

Q. Is he going to get from your client the same as he would from any other client under the same general circumstances?

A. I assume so, yes.

THEODORE REGENSTEINER resumed the stand.

The Court:

Q. Mr.—what is your name?

A. Regensteiner.

Q. You imagined something and this gentleman assumed something. Now, I want to know whether you are going to expect Miller to work for nothing?

A. I don't expect him to.

Q. You don't?

A. No, sir.

Q. You will pay his bill as he renders it?

A. Surely.

Q. You hesitate, and then you use very forcible language when you answer. Now, which is it, will you pay his bill when he renders it?

A. If it is within reason.

Q. What do you consider within reason?

A. I haven't the remotest idea, your Honor.

Mr. Miller: If the court please——

The Court: I am protecting you. Now, keep still.

Mr. Miller: I don't need any protection.

The Court: Then go ahead.

Mr. Miller: Besides, I don't want any situation to arise here whereby the court may want the usual commission for collecting fees for me.

The Court: Go ahead.

624 Mr. Jacobson:

Q. Mr. Regensteiner, at the time that you engaged Mr. Miller or permitted your lawyer, Mr. Grollman, to engage Mr. Miller to repre-

sent you in this proceeding, did you know that he also represented Mr. Zuncker and Mr. Vette?

A. I did.

Q. And what was your object in retaining the same lawyer, if you know?

Mr. Miller: I object to that as immaterial.

The Court: Objection overruled. Answer the question.

A. I was very much impressed with Mr. Miller as representing the interests of—

The Court: Do you withdraw your objection?

A. (Continuing:) —of his clients.

Mr. Miller: No, I don't. I stand true to the rules of evidence. I go where the logic of the situation takes me, even though I have to strip bouquets off of the lapel of my own coat to do it.

Mr. Jacobson:

Q. Proceed and answer the question, Mr. Regensteiner, after the statement you made that you had been impressed. What else?

A. Nothing else.

Q. That was the only reason?

A. I felt the necessity of having additional counsel.

Q. Yes.

A. And I felt that Mr. Miller was representing my side of it in connection with Zuncker and Vette.

Q. What made you feel the necessity of additional counsel?

Mr. Miller: Is that proper?

The Court: Yes.

Mr. Miller: Well, I object to it as wholly immaterial.

The Court: Overruled.

A. The importance of the matter.

Mr. Jacobson:

Q. And did you after that have a conference with Mr. Miller?

A. Only one.

Q. Was Mr. Zuncker present?

A. He was not.

Q. Did you have conferences with Mr. Zuncker?

A. Never.

Q. Never?

A. Never.

Q. How often were you at the office of Marcuse and Company?

A. I stated before, on an average of once or twice a month.

625 Q. And you had a very active trading account there, did you not?

A. Not very active.

Q. Did you see the audit that was prepared by Londelius?

A. I saw one audit.

Q. Which audit was that?

A. Oh, I couldn't say.

Q. You saw the first audit prepared by McDonald?

A. I don't remember.

Q. In September, 1918?

Mr. Miller: 1917.

A. I couldn't conscientiously answer.

Mr. Jacobson:

Q. Now, in that audit did you notice the item of \$13,000 for the expenses of the furniture in the office of Marcuse and Company?

A. I don't recollect any such item.

Q. Did you see the statement of profits and losses of that firm?

A. I saw them from time to time.

Q. And you were furnished with those statements by Mr. Marcuse?

A. Only at his office.

Q. No one restricted your right to investigate further at any time, did they?

A. No, no one took any objection to it.

Q. Did you ever ask to see the books of Marcuse and Company and be refused by anyone?

A. I never asked.

Q. You knew that under your contracts, whatever they were, you had a right to investigate and audit the books of Marcuse and Company once each month, did you not?

A. I didn't know there were provisions for that.

Q. Didn't you read the certificate which you received a copy of, at any time before or after you invested your money?

A. I no doubt read it at the time that I signed it.

Q. I show you petitioner's Exhibit 6 of May 10, and will ask you if you did not look this over very carefully at any time within the past three years?

A. I never looked it over except—

Q. You have not seen it yet. Now, please look it over, first.

A. I might have seen it, but I don't remember.

Q. Did you ever know that this contract refers to the partnership contract which is attached thereto and marked Exhibit 626 A, being a partnership contract between Ben Marcuse, L. H. Morris, Frank Hecht and Joseph M. Finn?

A. I am sorry, but I don't remember anything about it.

Q. Do you mean to say that you and your partner, Mr. Grollman, who put up \$10,000 with your \$18,000, never discussed it and the terms of it?

A. Oh, well, in a general way, I suppose we did.

Q. You had this before you all the time, did you not?

A. What do you mean, "all the time?"

Q. Your copy of this contract, which is Petitioner's Exhibit 6.

A. What do you mean?

The Court: Before you all the time?

Mr. Jacobson:

Q. You had it in your possession, Mr. Regensteiner?

A. No, sir.

Q. You never had this in your possession?

A. I don't remember that I ever had that in my possession.

Q. Did you have your certificate, your Hecht-Finn trust certificate in your possession?

A. Yes, I did.

Q. Didn't you also have the trust agreement in your possession at the same time?

A. You mean this, that you just showed me?

Mr. Jacobson: I will ask counsel for the witness to produce the witness's copy of the agreement and the trust certificate.

Mr. Miller: I cannot produce any copy of the agreement and say that it is the witness's copy, because I have none. I produce the Theodore Regensteiner certificate and the Israel Grollman certificate. I explained to the court yesterday, when I produced those, that the original certificate was for the total amount to Mr. Theodore Regensteiner, and that certificate be surrendered, and these two certificates were issued in lieu of it.

Mr. Jacobson: I did not ask you for that.

Q. Did you receive a certificate known as Certificate No. 6?

The Court: Have you got it, Mr. Grollman?

Mr. Grollman: No, sir. The certificate? I don't know that they got that yet.

Mr. Jacobson: I want the original certificate issued to your client in the name of Theodore Regensteiner.

627 Mr. Grollman: I never saw that.

Mr. Jacobson: Counsel just stated that there was an original certificate issued and surrendered.

Mr. Miller: That would be in the hands of the Title & Trust Company then.

The Court: Was that the disposition that was to be made of it?

Mr. Miller: That was to go back.

The Court: It would be surrendered back to the trustee, probably.

Mr. Miller: Yes, it would have to go to them before these could be issued.

Mr. Jacobson: I will ask, Mr. Grollman, if you did not have a copy of the Hecht-Finn trust agreement of date June 17th, at any time?

Mr. Grollman: I saw it, yes.

Mr. Jacobson: Who did you get it from, Mr. Grollman?

Mr. Miller: Wait a minute. If the court please, I would like to have these witnesses examined in order.

Mr. Jacobson: Very well. I will call you after I get through examining this witness.

Mr. Grollman: That is why we have additional counsel. I am a witness in the case.

Mr. Jacobson:

Q. Mr. Regensteiner, don't you know that you and your partner, Mr. Grollman, discussed the terms of this document, Petitioners' Exhibit 6?

A. I can't remember that I did—whether we did.

Q. What makes you doubt it?

A. Because, as I stated before, I am pretty busy from morning until night, to answer all sorts of questions, and I don't believe that we went into the detail of it at all. I can't recollect it.

Q. Were you too busy in your own business to come in to Marcuse and Company's office forty or fifty times?

A. In five years.

Q. How many times have you been there?

The Court: We might as well suspend here, and I will ask you to get back here at half past one. I ask you to do this because I have fallen down on my calendar.

Thereupon a recess was taken until 1:30 o'clock P. M. of the same day.

628 In the Matter of MARCUSE & COMPANY, Bankrupts.

Landis, J.

Tuesday, May 11, 1920—2 o'clock P. M.

Court met pursuant to adjournment.

Present: Same as before.

THEODORE REGENSTEINER, resuming the stand, was further examined by Mr. Jacobson, and testified as follows:

Q. So that would you say, Mr. Regensteiner, of the contract which you did not see your understanding was that you were on the same footing as Mr. Hecht and Mr. Finn, is that right?

A. Well, I—

Mr. Miller: I object to what his understanding was.

The Witness: Well, I would not say that.

The Court: Objection overruled.

The Witness: As far as my recollection is.

Mr. Jacobson: That is all. Now, there is a check we would like to have this witness identify. Mr. Moses has the check.

Q. As far as your recollection is concerned, you were on the same footing as Mr. Hecht and Mr. Finn?

Mr. Miller: I object to that as calling for a conclusion and asking the witness behind the written document.

The Court: Objection overruled.

A. I understand that there was a difference.

Mr. Jacobson:

Q. When did you find that out?

A. Well, I think the contract shows the distinction.

Q. Oh, yes, but you testified before you didn't remember reading the terms of that trust agreement, was that right?

A. I do not remember whether I read it or whether it was told about there—Mr. Grollman or Mr. Grollman's brother. I knew the contents of it. I knew the existence of the contents. I do not remember whether I went through it item by item.

Q. So that the only difference that exists was by reason of the contract, is that right?

A. I guess that is right.

629 Mr. Jacobson: That is all.

Mr. Miller: That is all.

The Court: Do you want to ask the witness anything?

Mr. Platt: No.

The Court: Call your next.

Mr. Jacobson: We will call Mr. Wormser, if your Honor please.

LEO F. WORMSER, called as a witness on behalf of the Petitioning Creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. What is your name?

A. Leo F. Wormser.

Q. Your occupation?

A. Lawyer.

Q. Your office?

A. I beg pardon?

Q. Where is your office located?

A. 105 West Monroe Street, Chicago.

Q. Did you at any time in the year 1918 have occasion to visit the place of business of Marcuse & Company?

A. I did.

Q. Whom did you see there, if anyone?

A. Mr. Marcuse.

Q. Mr. Bruno Ben Marcuse?

A. Yes.

Q. Will you state what occurred?

Mr. Miller: How is that admissible as against any of my people?

Mr. Jacobson: Your Honor, it is preliminary.

Mr. Miller: There ought to be some limits to this thing. Here is a conversation between this gentleman and Mr. Marcuse.

The Court: Well, it might bind Marcuse; that is, it might tend to show that Marcuse was a member of the partnership. Go ahead.

Mr. Miller: Well, is there any dispute about that? Is there any answer here by Marcuse denying it?

The Court: Well, go ahead.

630 A. In the fall of 1918, late in October, I think, our firm represented certain creditors of the firm of Von Frantzius & Company, who in the settlement of the affairs of Von Frantzius & Company had accepted Von Frantzius trust certificates, under which Ben Marcuse was trustee. Another firm of attorneys in the city and ours were then of the opinion that the——

Mr. Miller: No.

Mr. Jacobson: Never mind your opinion.

The Court: Suppress the opinion. Proceed with the conversation.

The Witness (continuing): Stated to Mr. Marcuse through me, at an interview in his office, that the payments were not being made upon the Von Frantzius trust certificates as promptly as we believed they should be, and I endeavored to obtain collection of the amounts owing to our clients. In that connection I outlined to Mr. Marcuse—I stated to Mr. Marcuse in outline upon what grounds we expected to be able to collect our accounts, and stated, among other things, at that time that in our judgment the firm of Marcuse and Company was composed not only of Ben Marcuse and Lew H. Morris——

Mr. Miller: Now, haven't we gone far enough. Can you prove——

The Court: I can't for the life of me see how this possibly can lead to bind anybody except the man he was talking to.

Mr. Jacobson: It may be binding for that purpose, and it may be binding to show the actual business of that firm. Here are partners. Once we have established a partnership, the admission of one would be binding upon all the members of the firm, and the gentleman hasn't finished his testimony yet.

The Court: The only question is whether you have established it. I won't spend any time listening to admissions by anybody. This statement by Mr. Marcuse to Mr. Wormser, I take it, is on the theory there was at that time in existence an actual general partnership.

Mr. Jacobson: Yes, your Honor.

The Court: And you expect I am going to sit here and listen to that, after you have established a general partnership against all these men—listen to that kind of stuff? What for? What would be the avail of it?

Mr. Jacobson: I withdraw that question.

631 Q. Did you have a talk with anybody else other than Mr. Marcuse?

Mr. Miller: The portion of the answer so far given I move to strike out.

The Court: Strike it out.

The Witness: I want to make clear to the Court I have not testified to anything Mr. Marcuse said to me.

The Court: You stated what you said to him.

The Witness: I just started to say what I said to him.

Mr. Jacobson:

Q. Did you have a talk with anyone other than Mr. Marcuse?

A. No one but Mr. Marcuse, excepting that on a second or third visit to the office of Mr. Marcuse a lawyer then in the office of Stein, Mayer & Stein was present during the latter part of the conversation.

Q. Now, who was that lawyer?

Mr. Miller: Objected to as immaterial.

A. I do not know.

Mr. Jacobson:

Q. Did you have a talk with Mr. Finn at or about that time?

A. I have never had any talk with Mr. Finn until after March 11, 1920.

Q. Or Mr. Hecht?

A. Never with Mr. Hecht on any other than social matters until March 11, 1920.

Q. Well, now, did you ever talk with Mr. Elias Mayer or Mr. Sydney Stein, the attorneys for the firm?

Mr. Miller: Yes, or no, please.

The Court: About this subject.

A. Not until after March 11, 1920.

Mr. Jacobson: That will be all with this witness.

The Court: Cross-examination is waived.

BENJAMIN MARCUSE, called as a witness on behalf of the Petitioning creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. Your name?

A. Benjamin Marcuse.

Q. You are one of the persons charged here with being a bankrupt?

632 A. Yes, sir.

Q. And you have testified here before?

A. Yes, sir.

Q. *And you have testified here before?*

A. *Yes, sir.*

Q. Will you state the circumstances under which the contracts—let me have those six which you presented here yesterday, Mr. Miller.

(Mr. Miller produces documents.)

Mr. Jacobson: Strike out what I said before.

Q. Will you kindly examine Zuncker's Exhibits 1 to 8 inclusive; and state whether you saw those at or about the time they were signed?

A. Yes.

Q. And who signed the contracts?

A. All these men that are——

Q. Mention their names. Just state their names.

A. Ben Marcuse, L. H. Morris, Frank A. Hecht, Joseph M. Finn, Henry Vette, Peter M. Zuncker, Theodore Regensteiner. This is Richard Yates Hoffman.

Q. Just state it, if that is correct.

A. Richard Yates Hoffman.

Q. Now, state whether or not Mr. Hoffman told you at any time that he represented persons other than himself?

Mr. Miller: That is objected to.

Mr. Jacobson: It is an admission against Hoffman.

A. Yes.

Q. Now, tell what he said to you and when that was.

Mr. Miller: I object to that. They can't prove by declarations made by Mr. Hoffman that he represented somebody else.

The Court: They can't prove that Studebaker was a partner by Hoffman's declaration in the absence of Studebaker. It can't have that effect, you understand.

Mr. Jacobson: No. Your Honor, I don't mean it to have that effect.

The Court: Go ahead.

Mr. Jacobson:

Q. State what Mr. Hoffman told you in respect to it.

A. I knew from——

Mr. Miller: No.

Mr. Jacobson:

Q. No, no. What did Mr. Hoffman tell you at any time?

Mr. Miller: No, not at any time.

633 Mr. Jacobson:

Q. At any time in the year 1917, what, if anything, did Mr. Hoffman tell you with reference to any other person than himself that he claimed to represent?

Mr. Miller: That I object to as immaterial and not admissible as against any of the people for whom I am speaking.

The Court: Objection overruled.

A. I do not know of anything that Mr. Hoffman told me.

Mr. Jacobson:

Q. Do you know Clement Studebaker?

A. Yes.

Q. Do you know George A. Studebaker, Junior?

A. Yes.

Q. Did you ever have a talk with George and Clement Studebaker, or either of them, with respect to Mr. Hoffman, Richard Yates Hoffman?

A. Yes.

Q. Now, tell us when that conversation took place, if once, or, if more than once, generally when it took place.

A. The first time I talked to Mr.——

Mr. Miller: I would like to have the time fixed, as near as you can.

Mr. Jacobson: He is telling you right now.

The Witness: The first time I talked to Mr. Studebaker in reference to this was about——

Mr. Miller: Which Mr. Studebaker?

Mr. Jacobson: I will find out in just a minute.

The Witness: Mr. Clement Studebaker——was about in March, 1917.

Mr. Jacobson:

Q. And which Mr. Studebaker did you speak — at that time?

The Court: Clem. Studebaker.

The Witness: Clement Studebaker.

Mr. Jacobson: Yes. What, if anything, did he tell you with reference to Richard Yates Hoffman?

A. At that time he said he would have Mr. Scott Brown take care of the details?

Q. Of what?

A. Of forming a partnership.

Q. And Scott Brown is a lawyer?

A. Scott Brown represented—he is a lawyer representing the Studebakers.

Q. Now, what else did Mr. Clement Studebaker tell you
634 that Scott Brown would do, besides forming the partnership, if anything, at that time?

A. He said Scott Brown—he had arranged with Scott Brown for details in reference to forming a firm.

Q. Did you outline to Mr. Clement Studebaker at that time what the proposition was?

A. Yes.

Q. Please tell us what you at that time told him, as near as you now remember.

A. I told him that I would have to form a new firm with a capital as outlined originally of about \$350,000, and I asked him whether he would consent to become a special partner in the firm that I would form. I told him that if I could form this firm that I had agreed to get the Von Frantzius estate out of bankruptcy, and that I had obligated myself to pay any deficit that might

arise out of the estate from my personal profits in a firm which I intended to form.

Q. What else did you tell him, if anything? Did you ask him for any definite amount?

A. At that time we spoke of an amount between fifty and a hundred thousand dollars.

Q. What do you mean? Explain that.

A. That I required—that I had personally about \$130,000, and I would require at least \$200,000 to be made up of special partnership money.

Q. Did you ask him for any definite amount in the way of his contribution to that fund?

A. I don't remember.

Q. Did he ask you what you expected him to contribute as a special partner?

A. Yes, he asked me what I expected, and I told him that I would require either fifty or a hundred thousand, or depending on how many other partners I would get.

Q. You say "require." Required from whom?

A. Required for the purpose of forming this new——

Q. Required from whom?

A. From him.

Q. Clement Studebaker?

A. Clement Studebaker.

Q. Did you at that time discuss with him his brother's situation and his brother's interest in this proposition—George A. Studebaker?

Mr. Miller: That is objected to. He can't bind George M. Studebaker by that conversation.

635 Mr. Jacobson: I am not trying to. I am trying to bring out the fact.

The Court: Objection overruled.

The Witness: Will you read the question again?

The Court:

Q. Did you at that time have any talk with Clement Studebaker regarding his brother George?

A. In a general way he inferred that his brother——

Mr. Jacobson: No. What is your best recollection as to what you or he said about his brother George taking an interest, if anything? Give the substance.

A. I can't recollect the conversation.

Q. What was the substance of it, as you now recall it?

A. The substance is that his brother George would do what he suggested in this matter.

Mr. Miller: I move to strike out the answer as not binding on George Studebaker.

The Court: It isn't binding on George. It stands as against the other parties to the conversation.

Mr. Jacobson:

Q. Who said that, Mr. Marcuse? Who told you that his brother George would do the same as he did? Who told you that?

A. He didn't say just that way.

Q. What did he say, as you recall it?

A. He said that his brother George would do according to what he wanted him to do.

Q. Clement said that his brother George would do as he (Clement) would direct him to do, is that right?

Mr. Miller: No, that isn't what he said. That isn't the statement of the witness.

The Court: He is talking with Clem. and Clem. is telling him what George would do. There isn't any confusion.

Mr. Jacobson:

Q. Now, did you have a talk with George Studebaker at that time or later?

A. No, I did not.

Q. Do you remember the first time you talked to George Studebaker about this deal?

A. I don't think I ever did talk to George Studebaker about this deal or the details of this deal.

Q. Now, did you ever talk to Scott Brown or to Clement Studebaker, in the presence and hearing of George Studebaker, about this deal?

A. Not about this deal.

Q. Well, what did you talk about?

636 A. I didn't see Mr. George Studebaker until after the firm was completed and in existence.

Q. Now, then, did you have a talk with him?

A. Just about business in general.

Q. Yes. Did you discuss with him, George Studebaker, the way your business was going along?

A. I don't remember.

Q. Did you discuss with him the question of whether you had made profits or otherwise in your business?

A. I think not, as I remember.

Q. What?

A. I don't remember.

Q. Did you discuss it with Clement Studebaker from time to time?

A. Once in a great while, yes.

Q. And what were the things you discussed with him with reference to your own business?

A. He asked me how we were getting along.

Q. Yes, sir. What did you tell him?

A. I told him that we were doing a fairly good business.

Q. Do you remember whether you stated to him the amount of trades that you had daily in your office?

A. No.

Q. Did you tell him the number of solicitors or salesmen that you had on the floor?

A. No.

Q. Did you discuss with him the amount of your operating expenses?

A. I may have mentioned it or not. I don't remember.

Q. Did you discuss it with Mr. Scott Brown—all these items?

A. Once in a while, yes.

Q. In this first conversation in March, 1917, that you say Clement Studebaker told you that Scott Brown would look after the details, I forgot to ask how did that conversation wind up? What did Studebaker say to you at that time?

A. This conversation took place in Boston.

Q. Where?

A. In Boston.

Q. What did he tell you there?

A. He told me that, he would immediately communicate with Mr. Scott Brown—

Q. Yes.

637 A. —and that Mr. Scott Brown would finish all the details, and I went to Chicago from there.

Q. Did he give you any letter or writing or memoranda to Mr. Scott Brown?

A. No, he wrote to him.

Q. In your presence?

A. No.

Q. Now, had you and Clement Studebaker fixed upon the amount of his contribution in that conversation?

A. No, not decidedly.

Q. Was it left open as between fifty—

A. Yes.

Q. —and one hundred thousand dollars?

A. Yes.

Q. Now, when did you hear from Scott Brown after this talk in Boston with Clement Studebaker?

A. Immediately; soon afterwards.

Q. Did you go to Scott Brown, or did he go to see you?

A. Why, I went to see Scott Brown.

Q. And tell us the conversation you had with Mr. Brown, and tell us when it took place?

A. Mr. Scott Brown told me—

Mr. Miller: When was it, please?

A. Perhaps a few days after this conversation with Mr. Studebaker.

Q. In March, 1917?

A. Yes. When I say "March," it may have been the beginning of April, or it may have been the end of February. I do not recollect. Just about that time.

Mr. Jacobson:

Q. Go ahead and tell us what happened at the first talk with Scott Brown?

A. He said that he had received a letter from Mr. Clement Studebaker, and that he was anxious—that Mr. Clement Studebaker instructed him to give me the assistance that I required, and help me to get this new firm started, but that he wanted to keep down the amount of the subscription to a minimum, and decided then that the amount should be fifty thousand instead of a hundred thousand.

Q. What else took place at that time?

(No answer.)

Q. If you don't remember, let me ask you this question: Did you state to Mr. Scott Brown where you intended to conduct this business?

638 A. Oh, yes.

Q. What did you tell him?

A. I told him that I would retain the present office quarters, procure the lease, and make all preparations for the new firm.

Q. Did you tell him or not whether it was any advantage in retaining the same quarters that had been occupied by Von Frantzius & Company?

A. I think I did.

Q. Tell us what you told him about it.

Mr. Miller: How is that material?

The Court: Go ahead.

A. I told him it was a very desirable location; that we had a very low rent; that the fixtures and furniture were valuable and could not be duplicated except for a considerable amount of money; that the fact that the office would remain open so that customers could come in and read the quotations would add and would be an asset to the new firm, and that I would procure, if I could, the lease and everything necessary toward starting a new firm.

Mr. Jacobson:

Q. Now, did you discuss with him what the overhead expenses would be, and the likelihood of your profits for the Studebaker investment?

A. No, no, I think not.

Q. Now, did you discuss that feature with Mr. Brown after that?

(No answer.)

Q. Did he ask you questions about what was the amount of your overhead expenses?

A. He may have. I don't recollect any certain conversations.

Q. I see. Now, state whether or not Mr. Scott Brown told you whom he represented.

Mr. Miller: I object to that as not competent.

Mr. Jacobson: I will withdraw that question. I beg your pardon.

Q. Did you receive any money from Mr. Brown?

A. You mean for the firm?

Q. Yes.

A. Yes.

Q. How much?

Mr. Miller: Fix that date, please.

Mr. Jacobson: I will. Now, please. Your Honor, I will ask Mr. Miller—

639 The Court:

Q. How much did you get, Mr. Marcuse?

A. \$50,000.

Mr. Jacobson:

Q. Now, did Mr. Scott Brown tell you whether it was—strike that out. Did you ascertain from Mr. Scott Brown whom this \$50,000 was paid, if anyone?

A. Yes.

Q. Now, what did he tell you?

Mr. Miller: I object to that. He can't prove by statements, as against somebody else, that he paid that money.

The Court: This man has testified he saw a man in Boston, and that following that he and Brown got together, and Brown told him it would be \$50,000 maximum, that that would be as much as they would put in in connection with that matter. On that occasion or other occasions, but following the Boston matter. Am I right about it?

Mr. Jacobson: Yes, your Honor.

The Court: All followed Boston.

Mr. Jacobson: Yes, your Honor.

The Court: Go ahead.

Mr. Jacobson:

Q. What did Brown tell you as to where this money came from, if anything—this \$50,000?

A. From Studebaker Brothers.

Q. Did he mention the names?

A. Yes.

Q. What names did he mention?

A. Clement and George M.

Mr. Miller: What did he say?

Mr. Jacobson: Clement and George M.

Q. Now, Mr. Marcuse, were there a number of conferences between Vette, Zuncker, Regensteiner, the lawyer Scott Brown and others, between this talk in Boston, which may have taken place in

March—might have been February or April—and June 30th, 1917?
Yes or no.

A. Yes.

Q. Where were these conferences?

Mr. Miller: I object to the wholesale method in which he is going about this.

Mr. Jacobson: I will come down to finer retail figures in just a minute. Give me a chance.

Q. Where were these conferences generally? In whose office?

A. In Colonel Foreman's.

640 Q. Now, state whether or not Colonel Foreman represented anybody that you ascertained?

A. He represented Vette and Zuncker.

Q. Did you find that out from Vette or Zuncker?

A. Yes.

Q. Did they personally——

A. Yes.

Q. Which one told you that?

A. Mr. Zuncker.

Q. Do you remember when he told you that?

A. I think he told me this after he consented to come in the firm.

Q. Oh, did you have a talk with Mr. Zuncker before he consented to come in, and went to a lawyer and got into conferences?

A. Yes, I talked to Mr. Zuncker.

Q. Now, when was the first time you discussed this proposition with Mr. Zuncker?

A. I talked to him about it at his home one evening.

Q. When?

A. Perhaps around in March.

Q. Well, how long, if you remember, before April 2, 1917?

A. Oh, fully thirty days.

Q. Now, tell us what was the thing you talked to Mr. Zuncker about? All that you now remember.

A. I told him that I would need additional capital in forming a new firm for the purpose of taking over the Von Frantzius estate and taking it out of bankruptcy, and fulfill promises made by me to the creditors. I told him who were the prospective partners.

Q. Who did you tell him were the prospective partners?

A. I don't remember, except those that had agreed to come in.

Q. What were the names you mentioned to Mr. Zuncker?

A. I told him that the Studebakers——

Q. Which ones?

A. That——pardon me. May I correct that answer?

Q. Certainly.

A. I told him that Mr. Hoffman would become a special partner representing Mr. Clement and George M. Studebaker.

Q. Well, now, stopping a minute with your conversation with Zuncker, state whether or not Mr. Brown ever told you anything with respect to Mr. Hoffman, Richard Yates Hoffman?

641 A. Yes.

Q. Now, when did he tell you anything? Was it before June 30th, 1917?

A. Yes.

Q. Now, was it with respect to this contract which is offered by Zuncker as his Exhibit 1, and which is dated April 2, 1917, which contains the name "Richard Yates Hoffman"—state whether or not Mr. Brown told you this before this contract was signed by anybody?

A. Yes.

Q. Now, tell us what he said with reference to Mr. Hoffman? What did he say about him?

A. He said that Mr. Hoffman would represent the interest of the Studebakers.

Q. Did Mr. Hoffman appear at conferences from time to time?

A. He did at several conferences at Colonel Foreman's office.

Q. And whose matters would Mr. Hoffman discuss at those conferences?

A. The matter of this partnership.

Q. And did he state at that time for whom he was acting, if any one?

A. Everybody knew. It wasn't necessary for him to state.

Q. I see. Now, going back to this conversation you had with Mr. Zuncker, and which you got started by telling Mr. Hoffman was in the firm as representing the Studebakers,—what else did you tell him or what other names did you give him?

A. I gave him the names of those that had consented to come in.

Q. Yes. Who were they?

A. But I do not know whether they all at that time had consented.

Q. Well, what names do you now recall that you gave him at that time in that conference?

(No answer.)

Q. To refresh your recollection, did you tell him at that time that Mr. Hecht, Mr. Frank Hecht, had agreed to come in?

A. Yes.

Q. Did you mention Joesph M. Finn?

A. Yes.

Q. Did you mention Theodore Regensteiner?

A. I may and I may not. I don't know.

642 Q. And did you mention his partner, Vette?

A. Yes.

Q. Now, what else did you tell him about the prospects or the proposition that you were discussing, aside from what you have already told us?

A. Will you put your question again?

Q. What else besides what you have already told us that you said to Zuncker did you say at that time? Did you discuss the amount of money you would require?

A. Yes.

Q. Tell us what you said about that?

A. I told him that I required a total of \$200,00—

Q. For what purpose?

A. —which at that time was the amount necessary, according to my contract. For the purpose of new capital, besides the capital that I furnished.

Q. And did you tell him what the name of this new firm was to be?

A. Yes.

Q. What did you tell him?

A. Marcuse & Company.

Q. And did you tell him what you expected him to be?

A. Yes.

Q. What did you tell him?

A. Special partner.

Q. A special partner?

A. Yes.

Q. And did you ask him for any certain amount of money to contribute to that fund at that time?

A. I think I did.

Q. Do you know how much?

A. \$25,000.

Q. Twenty-five thousand?

A. Yes.

Q. Did you discuss with him his partner's affairs,—Henry Vette?

A. Perhaps I did.

Q. Well, what is your recollection about Henry Vette that took place in that conversation?

A. It was understood that if Mr. Zuncker came in, Mr. Vette would come in for the same amount.

Q. What was said by Mr. Zuncker, if anything, about that?

A. I do not recollect.

Q. What did you say to Zuncker about his partner, if anything?

643 Mr. Miller: I think his talk with Zuncker about Vette doesn't disturb Vette.

Mr. Jacobson: No, it is limited to Zuncker.

Q. To refresh your recollection, did you state to him you would want him to contribute twenty-five and his partner also \$25,000?

A. Perhaps I did.

Q. And did you state to him—

Mr. Miller: What was the answer?

A. Perhaps I did.

Mr. Jacobson:

Q. Well, is that your recollection?

A. My recollection is that I stated that if he came in that Mr. Vette would also come in.

Q. What did he say to that?

A. He consented.

Q. No; what did Zuncker say about that. You say "he consented." What did he say that indicated that to your mind?

A. That both Mr. Vette and Zuncker would come in.

Q. Did he state for how much?

A. Twenty-five each.

Q. This is Zuncker that told you this, is that right?

A. Yes.

Q. Did you discuss with Mr. Zuncker the amounts of profits you would likely make in this new firm at that time?

A. Oh, I told him, perhaps, the possibilities of the brokerage business, the amount of commission and interest that could be earned in prosperous times; but it was only a guess on my part.

Q. Yes; what did you tell him about it?

A. I told him that the earnings in prosperous times would amount to from a hundred to one hundred and fifty thousand dollars.

Q. That would be pretty nearly as much as the capital to be contributed by the limited partners, the special partners, wouldn't it?

A. Yes, pretty near.

Q. And he thought that was a good idea?

Mr. Miller: Oh!

The Court: Sustained.

Mr. Jacobson: I will withdraw that.

Q. What did he say about those profits at that time?

A. I do not remember.

Q. Nothing that you remember?

644 A. No.

Q. Do you remember whether or not he stated at that time that he was going to submit it to his lawyers?

A. Yes, I believe he did.

Q. What did he tell you?

A. He said Colonel Foreman was his lawyer, and he would confer with him.

Q. And did he tell you what his instructions were to Colonel Foreman, or what he would tell the Colonel to do?

A. I do not remember.

Q. Now, then, you saw him at Colonel Foreman's office, did you?

A. Yes.

Q. Now, do you remember the date? Was it the date of these contracts, or before that?

A. It was prior to the date of these contracts.

Q. Now, who was with you, if anyone?

A. Mr. Sydney Stein.

Q. Was he acting for you?

A. He was acting for me.

Q. How many conferences did Mr. Sydney Stein have with Colonel Foreman, if you know?

A. Oh, at least—

Mr. Miller:

Q. That is when you were present, so that you know personally.

The Witness: When I was present?

Mr. Jacobson: Wait a minute. Answer the question I put and I will find out.

Mr. Miller: No.

The Court: He can't tell how many times the lawyers got together unless he was there.

Mr. Jacobson: Very well.

Q. How many conferences were you present at that were had between yourself, Sydney Stein and Colonel Foreman?

A. I remember three conferences.

Q. Before the date of this contract, which is introduced in evidence as "Zuncker Exhibit 1"—that is, the contract of April 2nd, is that right?

A. Yes.

Q. What was discussed between Mr. Stein, yourself and Colonel Foreman at those three conferences?

Mr. Miller: Your Honor, that is all subject to my objection, that all this preliminary evidence is immaterial.

A. The articles of the partnership—special partnership.

645 Mr. Jacobson:

Q. I see. Now, had you talked to Mr. Vette before the first conference with Mr. Foreman—Mr. Henry Vette?

A. I think I did.

Q. Did you tell him about the deal?

A. Yes, I must have told him about the deal, but my recollection is that Mr. Vette and Mr. Zuncker discussed that amongst each other, and that they both came down and we discussed it together.

Q. Who is "we"?

A. Mr. Vette, Mr. Zuncker and myself.

Q. And did you go over the deal and what the proposition was?

A. Oh, I don't remember that, perhaps I did.

Q. You talked about this particular proposition, didn't you?

A. Yes.

Q. Now, were all these people present in the office of Colonel Foreman at the time this contract was signed, referring to "Zuncker Exhibit 1"?

A. Will you repeat that question? Were they all present before this was signed?

Q. No, but at the time it was signed?

A. Yes.

Q. Who wrote it up, if you know?

A. Wrote up what?

Q. This contract?

A. The contract was written by Colonel Foreman and Mr. Robertson.

Q. I see. Now, do you remember a letter that was written by Colonel Foreman? (Handing document to witness.)

A. Yes.

Q. Are these the letters that were written by Colonel Foreman? I refer to "Zuncker Exhibits 9 to 16 inclusive.

A. Yes, sir.

Q. And the signature on the typewriter "Milton J. Foreman," does that refer to Colonel Foreman?

A. Yes, sir.

Q. Now, state the circumstances under which these letters were written, if you know?

A. After these contracts were signed, I had not as yet received permission from the New York Stock Exchange to do business as Marcuse and Company, and I thought that all that was necessary is to announce to the New York Stock Exchange the formation of this firm, not knowing that there would be any objection. When
646 I went to New York for the purpose of introducing my new firm I came before the Board of Admissions, and they stated that the partnership—

Mr. Miller: Your Honor, he isn't answering the question.

Mr. Jacobson: All right.

Q. Did you find out anything with respect to the New York Stock Exchange rules after you—

A. Yes.

Mr. Miller: Have you abandoned the other question?

Mr. Jacobson: What other question are you referring to?

Mr. Miller: The one you asked him and the one he is starting—

Mr. Jacobson: He is telling about the circumstances of this letter, and I presume he is answering the question.

The Court: Is there any controversy on the part of anybody here as to the fact of the New York Stock Exchange limitation of the number of limited partners?

Mr. Miller: We are not going to deny it. We don't know, but we are taking that telegram that has been introduced in evidence.

The Court: What you want is to get the witness back from New York to his contact with these people where he made assertions to them.

Mr. Jacobson: Yes.

Q. After you ascertained the situation of the New York Stock Exchange, did you report that to these people with whom you discussed this business?

A. Yes, I reported the fact first to my attorney, Mr. Stein.

Q. And then?

A. And then to the others.

Q. Did you report it to Colonel Foreman?

A. Yes.

Q. Did you report it to Mr. Zuncker?

A.

Q. Mr. Vette?

A. Yes.

Q. Mr. Regensteiner?

A. Yes.

Q. Mr. Richard Yates Hoffman?

A. Yes.

Q. To Mr. Scott Brown?

A. Yes.

Q. Now, tell the circumstances under which these signatures to this letter were torn off, if you know. The letters are "Zuncker Exhibits 9 to 16, inclusive.

A. They were torn off—Oh, will you repeat that question?

(Question read).

Q. Can you answer that question?

A. No, I can't answer this question.

Q. All right. Now, I show you "Zuncker Exhibits 1 to 8" inclusive, which appear to have the signature pages partially torn off. Do you know the circumstances under which those signatures were partially torn off?

A. Yes.

Q. State what you know about it?

A. The original partnership contract was not enforced.

Q. Yes?

A. And the firm had to be re-organized.

Q. Who tore off the signatures on those contracts?

A. I don't know.

Q. Do you know where it was that they were torn off?

A. These contracts remained in the office of Colonel Foreman.

Q. Now, was there any reason why these contracts remained in the offices of Colonel Foreman? If you know?

A. None special, except that my attorney and Colonel Foreman made up these contracts together.

Q. Did you hear anybody state that these contracts were not to delivered for any reason at any time in those conferences?

A. Yes.

Q. What was said about it?

A. That they would be delivered as soon as the firm was officially started.

Q. I see. And what else was said about starting the firm officially. What was referred to by that?

A. Getting the consent of the New York Stock Exchange is one.

Q. Yes.

A. Getting the estate, the Von Frantzius estate out of bankruptcy, is two.

Q. Was there any other thing that held it up?

A. I think another condition was that a bond that I was to furnish to the administrators.

Q. Now, did you furnish that bond?

648 A. Yes.

Q. Did you finally comply with the rules of the New York Stock Exchange?

A. Yes, sir.

Q. And did you get the Von Frantzius estate out of bankruptcy?

A. Yes.

Q. Now, this letter that you say was prepared by Colonel Foreman which is "Zuncker Exhibit 12," contains the following statement: I will read it first and then ask you a question about it.

(Reading:) "The understanding and agreement under which the Limited partnership of Marcuse and Company was formed was (a) that the proceeding in bankruptcy against Von Frantzius & Company, now pending in the United States Court, be dismissed."

Now, do you know whether or not the proceeding in bankruptcy against Von Frantzius & Company, that were pending in the United States Court, were in fact dismissed?

A. They were.

Q. Now, the second condition stated in this letter is as follows:

Mr. Wormser: That is a pretty long paragraph. Would you mind showing him a copy of that?

Mr. Jacobson: No. Thanks for the suggestion. I will borrow yours, Mr. Miller. (Handing document to the witness.)

Q. (Reading:) "(b) That definite arrangements should be concluded with the administrators of the estate of Frederick W. (Alias Fritz) Von Frantzius, with the consent and approval of the Probate Court, for the delivery to Ben Marcuse, as trustee, of all of the estate of Frederick W. (Alias Fritz) Von Frantzius, except such amount thereof as the Probate Court may deem it necessary to leave the Administrators retain in their hands as indemnity against unknown claims, claims not yet filed, claims not assenting to the trust arrangement with said Marcuse, and the costs and expenses of administration."

Now, Mr. Marcuse, state whether or not these arrangements were concluded and the other things done that are referred to in that paragraph (b)?

A. Yes.

Q. Now, at this conference in Colonel Foreman's office when you stated that those conditions were discussed, the fact that you had to get on the New York Stock Exchange, what, if anything, did you or did Mr. Sydney Stein, or anyone, say that you would proceed to do as regards that office of Marcuse & Company on La Salle Street?

Mr. Miller: Well, that is leading and suggestive, and assumed that there was something of that kind said.

Mr. Jacobson:

Q. What, if anything, was said about that? I put that in before.

A. I don't remember.

Q. What?

A. I don't remember.

Q. Well, to refresh your recollection, did you tell them you were going ahead and run that office for the time being, get it ready?

A. Yes.

The Court:

Q. Was anything said as to what would be done with those quarters or how you were going to put in your time?

A. Yes, we were going ahead.

Mr. Jacobson:

Q. Now, tell us all you told those people at that conference, if you remember?

A. I told them that it was necessary—It had become necessary to reduce the numbers of special partners to two, and that Mr. Frank A. Hecht and Mr. Joseph M. Finn were willing to become the special partners.

Q. What else did you tell them, if anything?

A. And that the firm would be permitted to become a regular firm, after this arrangement had been completed and the contribution made by the balance of them.

Q. Now, did you state whether or not you told them at that time that your lawyers, Colonel Foreman and Mr. Sydney Stein, had found a way in which to make the deal?

Mr. Miller: That I object to as suggestive and leading.

The Court: It isn't necessary to put so many questions in a way that is open to that objection. It isn't fair that it should be done that way, because the matters you are now dealing with are matters that are essential here, and they are not immaterial matters or preliminary matters. They are ultimate matters. This character of question is not a fair question.

Mr. Jacobson: Your Honor, I will withdraw that question.

Q. At this conference, who was present, by the way, when you reported the acts of the New York Stock Exchange?

Mr. Miller: Now, if the Court please, he has not yet said, if I understood him, that he did make that report at a conference. He has said that he notified all of these various gentlemen.

650 The Court:

Q. Were they all together? Did you get them together or did you talk to them separately, or were they all together at one time?

A. They were all together at one time, but I talked to them separately.

Q. They were all together on one occasion?

A. Yes.

Q. That is, after you came back from New York?

A. After I came back from New York.

Q. And was it the first time that you disclosed to these men, or any of them, after you came back from New York—were they all

together then or were they all together on another occasion after you had talked to them separately and told them about the New York Stock Exchange rules?

A. I talked to my attorney first, and after we had talked separately to the others, as to whether Mr. Frank Hecht and Joe Finn would be willing to assume the—to become special partners, then I talked to them separately, and we called them together and talked to them collectively at Colonel Foreman's office.

Mr. Jacobson :

Q. Now, going back to those separate discussions that you had with those people after you came back from New York and talked over the matter with your attorney, tell us all that you said to Mr. Zuncker about this transaction, if you recall.

A. Nothing further, as I remember.

Q. Well, to refresh your recollection, you have testified that you told Mr. Zuncker and these others that under the rules of the Stock Exchange you could only have two partners. Now, what, if anything, did you tell him as to what you proposed to do to get around that rule?

Mr. Miller: Now, I object to that suggestion.

Mr. Jacobson: The witness has exhausted his memory. I am now refreshing his recollection by a leading question.

The Court: Strike out "get around that rule."

Mr. Jacobson :

Q. With respect to that subject, of conducting the business which you intended to do as Marcuse & Company.

The Court :

Q. You told them that the New York Stock Exchange rule limited the special or limited partners to two?

A. Yes.

Q. Did you tell him then that you were going off to Iowa and buy a farm and live on it, or did you tell him something else?

A. Oh, I told him that we would conclude our partnership
651 and go ahead just the same, and obviate the fact that we could show so many special partners by letting two of them assume the names of special partners for the others.

Mr. Jacobson :

Q. Now, what else did you tell Mr. Zuncker at that time, if anything?

A. I may have told him, as well as any of the others, that I had secured the lease of the premises, and that I was buying fixtures and furniture and stationery, and so forth.

Q. What did Mr. Zuncker say to that proposition at that time?

A. There was no objection on the part of he or anybody else.

Q. No. Do you recall what he said?

A. I do not.

Q. Do you recall he made no objection to it?

A. No. I talked to all of them on that subject, and they were satisfied for me to do that.

Q. Whom did you talk to when you say "all of them"?

A. Oh, off and on I may have talked to——

Q. No. I do not want to know whom you may have talked to. Whom do you recall now that you did talk to about this situation after you got back from New York, besides Zuncker whom you have already told about?

A. Oh, I talked to Mr. Scott Brown about it.

Q. Who?

A. Mr. Scott Brown.

Q. Yes. Who else?

A. Talked to Mr. Hecht.

Q. Yes.

A. Mr. Finn.

Q. Yes.

A. And also to Mr. Regensteiner, I think.

Q. Did you speak to Vette?

A. Yes.

Q. Or to Zuncker in Vette's presence?

A. I think I did.

Q. Now, then, you had a meeting of all of these gentlemen. Where was that meeting?

A. The meetings were usually held——

Q. No. The first meeting you had of all of these gentlemen after you told each of them separately about what happened in New York.

A. Yes.

Q. Where was that particular meeting?

652 A. Colonel Foreman's office.

Q. Now, tell us what took place at that meeting, if you now recall?

A. They were informed that—Pardon me——

The Court:

Q. Mr. Witness, this meeting that you are now speaking about was in Foreman's office?

A. Yes.

Q. Who was there, do you remember?

A. I am trying to think whether this is after my return from New York. This is the question you asked me—after my return from New York?

The Court: Yes.

Mr. Jacobson:

Q. Yes. Well, to refresh your recollection was Robertson present?

Mr. Miller: Wait. He hasn't fixed the time yet as to whether it was before or after.

Mr. Jacobson: Yes, he did, because my question——

A. I think he was.

Q. Now, tell who else was present that you now recall?

A. Mr. Hoffman.

Q. Richard Yates Hoffman?

A. Yes, and Mr. Hecht, Mr. Finn, Mr. Regensteiner, Mr. Vette and Zuncker. I think they were all present afterwards. This is just—I am speaking from memory. I can't just recall the special meetings.

Mr. Miller: Can't recall what?

The Witness: I can't recall the special meetings. I know we had several meetings in Colonel Foreman's office.

Mr. Jacobson:

Q. At this particular meeting, after you came back from New York.

A. This particular meeting after I came back, everything had been arranged between Mr. Sydney Stein and Mr. Robertson and Colonel Foreman as to how this new partnership was to be formed.

Q. Had you been present at any conference at Colonel Foreman's office when the new arrangement was discussed before this big meeting?

A. I had been present—I had gone down to Colonel Foreman's office with Mr. Sydney Stein at times.

Q. And who suggested, if anyone, Hecht and Finn as special partners?

A. I do not remember who suggested that. I believe I asked them.

Q. What?

653 A. I believe I have asked them to act as such.

Q. And what do you recall Colonel Foreman stated, if anything?

A. The idea of forming a trust was started by Mr. Sydney Stein.

Q. Yes.

A. And discussed with Mr. Sydney Stein, with Colonel Foreman and Mr. Robertson.

Q. Yes.

A. And put into shape by these three lawyers before we had any further discussion.

Q. Now, at this big meeting that you had, the first general meeting, after your arrival from New York, who stated the new proposition, if you recall; who outlined it?

A. I think Mr. Sydney Stein.

Q. And did anybody find fault with it at the meeting that you now recall?

A. I don't remember.

Q. State, if you recall, just what Sydney Stein told them at that time?

A. He told them that the purpose of forming this partnership would not be changed by combining these partners into two special partners, and that it would—that it ought not make any difference

to any of them whether they would have carried the name as special partners openly or contribute towards the fund.

Mr. Miller: Keep your voice up, please, Mr. Marcuse.

The Witness: I don't know of anything else that he said. That is about all.

Mr. Jacobson:

Q. By the way, was Mr. Scott Brown present at that conference?

A. I don't remember.

Q. What?

A. I don't remember.

Q. Now, how many conferences did you have after this particular conference until June 30th, 1917, if you remember? General conferences?

A. I don't think we had any further conferences until the articles were ready for signature.

Q. Now, at the time of this general conference, immediately after your return from New York, was this document, which is Petitioners' Exhibit 6, in preparation? Was it there at the meeting in any form, if you recall?

A. Yes.

Q. Now, do you know who prepared this document?

654 Mr. Miller: Did the witness say that when they had the first conference after he got back from New York that this trust agreement was ready for signature?

Mr. Jacobson: He said it was in preparation.

Q. Who had prepared it, Mr. Marcuse?

A. To my best recollection, it was prepared between those three lawyers that I mentioned before.

Q. And was it there in the office of Colonel Foreman at the time of this conference?

A. I can't remember that.

Q. Now, state whether or not at this meeting you said anything about the conduct of the business at 132 South La Salle Street, as to what you were doing there.

A. Just in a general way I may have said.

Q. No. Just what did you say? Tell us all you remember.

A. In a general way, I said I was making all preparations and acquiring necessary matters towards starting this firm.

Q. Is that all you remember saying on that subject at that time?

A. I want to say—I want to add that once in a while I was asked and stated these things to individuals.

Q. Yes. Did Mr. Zuncker ask you?

A. I couldn't say.

Q. Who besides Hecht and Finn asked you once in a while?

A. I think I offered information to Mr. Finn, Mr. Hecht, Mr. Scott Brown and Mr. Zuncker, if I saw him, of Mr. Vette, and Mr. Regensteiner.

Q. What do you mean by you offered information?

A. If I happened to see them or they were down town and I would meet them, I would tell them just what I was doing.

Q. Tell them all about it?

A. Yes.

Q. Now, at this meeting which you had, did you say anything about the expenses which you were incurring for furniture, fixtures, and ticker service in the interim until you could get started?

A. I think I have mentioned it.

Q. Yes. Now, did you mention any amount?

A. No.

Q. What is your best recollection as to what you said on that subject at this meeting?

A. I don't know as I said it at this particular meeting, but I told them that I had acquired the lease, that I was paying the
655 rent, that I was keeping the ticker in the office, and the board marker, and that I had bought the fixtures from the administrators, and that I had acquired a contract to finish the office, the additional office which had been taken by the former firm, and which had not been finished. The furniture was all under contract.

Q. Did you make these statements before June 30, 1917, to these various people?

A. Yes.

Q. Tell if you said anything at any time about being reimbursed out of the partnership contributions for these expenses.

A. I did nothing without the advice of my attorney, and whether I asked them for their permission I couldn't say.

Q. No, no. Did you discuss that matter, the question of reimbursement for these expenditures?

A. I think not.

Q. Did you hear your lawyer discuss it?

A. I don't remember, but my lawyer told me that it was perfectly satisfactory.

Q. I show you what purports to be a notice furnished the Chicago Stock Exchange, and ask you if you can tell if a similar notice was furnished the New York Stock Exchange? (Handing document to witness.)

A. Yes.

Q. Do you remember the date?

A. The date must have been either July 2nd or July 3rd.

Mr. Jacobson: The witness has held in his hand "petitioners' Exhibit 19."

Q. Now, did you ever tell Mr. Zuncker the original deal was off, or the firm wouldn't go on and do business?

A. No.

Mr. Jacobson: I am through.

Examination by Mr. Ringer:

Q. Did you notify the Chicago Board of Trade, Mr. Marcuse, of the inception of the business of the new firm?

A. I purchased a membership of the Board of Trade after June 30th.

Q. And in whose name was that purchased?

A. In my name.

656 Q. Did you make any written statement to the Chicago Board of Trade as to the nature of the business in which this Board of Trade Membership was to be used?

A. Yes.

Q. Did you tell them it was for the firm of Marcuse and Company?

A. Yes.

Q. And that statement was in writing, wasn't it?

A. The statement was in writing. I don't remember just the wording of the statement.

Q. Well, do you now recall what, if any, information you gave the Chicago Board of Trade concerning the status of the partnership, as far as the members were concerned?

Mr. Miller: For my people, I object to that as not binding on them.

The Court: Well, I do not see what his purpose could be.

Mr. Ringer: I presume the written statement would be the best evidence. The purpose is to find out whether he made it.

Q. Did you make a written statement?

A. I made a statement informing them of the—pardon me, will you strike that out? I was called before the Board of Trade. I made a statement before the Board of Admissions, but not in writing.

Q. Do you know before *when* you made that? What the name of the committee or Board was before whom you made that?

A. No, I do not. There were quite a few members.

Q. Did you make any written statement to the Chicago Board of Trade?

A. No.

Q. Did you make any written statement to the New York Stock Exchange?

A. No.

Q. Or any sub-committee?

A. No.

Q. Did you to the Chicago Board of Trade?

A. No.

Q. To the Chicago Stock Exchange?

A. No.

Q. Did you make any statement of any kind to either of these three Exchanges?

657 A. All statements of Exchanges are made in person; not in writing.

Q. Did you appear before the "Market Reports Committee of the Chicago Board of Trade" with reference to the status of the firm?

A. Yes.

Q. Do you now recall, what, if any, statements you made to that Market Reports Committee?

Mr. Miller: That is objected to as not binding on us.

Mr. Wormser: Just a minute, if the Court please. There is set for hearing now, before the Board of Trade, this very issue, and the issue—the trial of that issue before the Board of Trade has been postponed in deference to our request in order that the witness might appear here. I think, by similar reasoning, it would be unfortunate if the witness would now be asked to testify to anything that might be used against him in that hearing before the Board of Trade, particularly since the Board of Trade rules, as I understand, provide that if the member of the Board of Trade is expelled, the Board of Trade membership is forfeited, and thereby this estate would lose the benefit of that membership. That is not so on the Stock Exchange, but that is so on the Board of Trade, and we would, therefore, have a depreciation of the assets of this estate if any adverse statement was made by this witness.

Mr. Ringer: I haven't any desire to jeopardize the assets of this estate.

The Court: What is the purpose of this inquiry?

Mr. Ringer: The purpose of the inquiry is to show that the witness made certain statements concerning the status of the newly organized firm, and its financial condition, and the source of the contributions of the capital to the firm, which statements might be of value, and probably would be of value, in this proceeding.

Mr. Miller: How can any of us be bound by what he may have told?

The Court: Suppose he made a statement in detail to either one of these Exchanges of the source of this money, and that was not followed up with any showing of knowledge of it by the contributors?

Mr. Ringer: Why, I admit it wouldn't be binding on the contributors, unless it could be brought home to them, but there has to be a starting point somewhere along the line.

658 The Court: Have you got in mind it would be brought home to them?

Mr. Ringer: I do not want to make any promise in that regard, unless I can carry it out, and especially if a proceeding is pending this afternoon, which might destroy the membership—destroy \$10,000.00.

Mr. Wormser: It has been continued for one week on our request because of this proceeding pending here. I would prefer not to have this gone into, unless it benefits the estate.

Mr. Ringer: I will withdraw the question temporarily, and before we finish I may ask leave of Court to supplement it by some other evidence.

Q. Mr. Marcuse, can you tell us how it all came about that Mr. Hecht and Finn became the special partners out of this coterie of men with whom you had been dealing?

A. Yes.

Q. Will you tell us, please?

A. There is no rule in the Constitution of the New York Stock Exchange prohibiting a number of special partners, but it is an

unwritten law; but the rule is that no partner should be eligible, except that he is not interested actively in any other business. He may hold stock in a corporation, but he should not be an active partner of another business and become a special partner, and for that reason, Mr. Hecht being retired, was the most eligible for the New York Stock Exchange.

Q. You say they were the most eligible. Were any of the other of these gentlemen eligible at all under that unwritten rule?

A. Yes. I think any of them would have been, but inasmuch as the secretary of the New York Stock Exchange told me in these words that the New York Stock Exchange preferred to have—or that the New York Stock Exchange wants partners to be not actively engaged in any other business, I inferred that these two men would be rather preferred by the New York Stock Exchange.

Q. Will you now describe the acts and doings which brought about the picking out, or selection of these two men, Hecht and Finn, in the light of the testimony you have just given?

A. As I just stated, Mr. Hecht had retired from his business—

659 Q. Yes, but how did it come about? At a general meeting of all of the parties in interest?

A. No, I discussed this matter with Mr. Stein first, and then I asked Mr. Hecht and Mr. Finn whether they would be willing, and they consented.

Q. In other words, you, under the advice of your attorney, made the selection?

A. Yes.

Q. And was your choice communicated to the other men?

A. Oh, yes, they were asked about it.

Q. At this general meeting which you have discussed?

A. Yes, either there, or through their attorney. I do not remember just at which time.

Q. And what, if anything, did the other men, or any of them, do in that regard?

A. I believe they were guided by the advice of their lawyer, and they consented to the arrangement.

Mr. Miller: Just a moment; does he mean that in conversation with him they consented, or that is information he got from somebody else.

Mr. Ringer: Let the witness tell how that was arranged. I have no desire to lead him in that regard, or any other.

The Witness: Will you repeat that question?

Mr. Ringer: The question is, how did these other men manifest their willingness to go along, and in what manner?

A. I believe that we received the first—when I say “we” I mean Mr. Stein and I—received the first information through the lawyers of the individuals, as to whether they are satisfied to come in this arrangement.

Q. Well, as near as you can recall, give us the name of the lawyers, the approximate time of the information, and your recollection of the information as it was given to you?

A. Mr. Frank A. Hecht consented without his lawyer's advice. Mr. Finn assented, I think, through the advice of Mr. Elias Mayer, who was his lawyer.

Q. Mr. Mayer was your lawyer as well, wasn't he?

A. Well, Mr. Mayer was of the firm of Stein, Mayer and Stein.

Q. And was an associate or partner of the same counsel who were advising you?

A. Yes, I think Colonel Buckingham assented for Mr. Hoffman.

Mr. Miller: Let us get at that. Did Colonel Buckingham
660 tell you that? I am trying to get at what you know of your own knowledge.

The Witness: Yes. I believe that Colonel Buckingham talked to Mr. Stein about that. Now, whether he told that to me in person, I couldn't say, but he told the—he was in touch with my attorney.

Mr. Miller: Your Honor, may we not have the witness have the suggestion that he is only to testify to things that he knows himself, and not that he learned by hearsay from other people?

The Witness: Yes.

Mr. Ringer:

Q. Have you told all you recall with reference to the incident in which Colonel Buckingham's name was mentioned?

A. If I may amend that question of talking to Colonel Buckingham and Scott Brown together—this matter was discussed and consented to.

Q. Well, Mr. Witness, when you say "consented to," will you just tell us what was said, as near as you can recall it?

A. I can't recall the conversation inasmuch as I saw them frequently at that time and had many talks with them. I can't recall.

Q. Well, on this subject matter?

Mr. Miller: Well, on the basis of that statement about their consenting, etc., I move to strike it out.

The Court: Strike it out.

Mr. Ringer: We are agreed on that.

Q. You saw them on this matter of the change in the status of the organization of the new firm at frequent intervals during this time?

A. Yes.

Q. And when I say "them," I refer to Colonel Buckingham and Mr. Scott Brown?

A. Yes.

Q. Did you see them at any time apart from each other?

A. Yes.

Q. Or did you always meet them together?

A. I saw them at times apart from each other.

Q. Now, would you recall any specific meeting with either of these

gentlemen on the subject matter of this new arrangement, and tell us what took place, as near as you can?

A. I recall at one time Mr. Scott Brown meeting Mr. Frank Hecht for the first time.

Q. Were you present?

661 A. Yes.

Q. Now, give us that story, if you please.

A. He—Mr. Scott Brown told me afterwards that Mr. Hecht made a very favorable impression on him, and he liked him very well.

Q. Where did this meeting take place?

A. In Colonel Foreman's office.

Q. And you introduced the gentlemen to each other, did you?

A. Yes.

Q. Now, tell us, if you can recall, as near as you can, the substance of the talk between you three men?

A. There was no talk between us three men at that time.

Q. Well, the talk between Scott Brown and Mr. Hecht, that you heard, if any?

A. I can't recall the conversation.

Q. Do you recall any specific conversation relating to the new deal?

A. Mr. Scott Brown told me that he was satisfied to have Mr. Hecht represent their interests.

Mr. Miller: What?

The Witness: Have Mr. Hecht represent their interests.

Mr. Ringer: And this talk took place after these men had met, and after Scott Brown had said he had formed a favorable impression of Mr. Hecht?

A. Yes.

Q. And was that in direct connection with the formation of the partnership and the Hecht-Finn trust agreement?

A. Yes.

Q. At that time did Mr. Scott Brown know of the scheme or plan as evolved in that trust agreement?

Mr. Miller: Now, how could he tell what Scott Brown knew?

The Court: Sustained.

Mr. Ringer: Well, had that been presented to him?

A. Yes.

Q. It had been?

A. Yes.

Q. Well, by whom?

A. By Colonel Buckingham.

Q. That is Colonel Buckingham. Just tell us that story, please.

Q. Had Colonel Buckingham presented to Scott Brown in any manner the plan evolved for carrying on this Marcuse & Company business, and the Hecht-Finn trust?

662 Mr. Miller: In your presence?

A. In my presence. I remember visiting the office of Colonel Buckingham with Mr. Brown and Mr. Stein, when those things were discussed.

Mr. Ringer:

Q. Who was present, please?

A. I just stated, Mr. Stein, Colonel Buckingham and myself.

Q. Was this before the actual business opened over at your new office?

A. Before the business opened, yes.

Q. And after the New York Stock Exchange episode?

A. Yes.

Q. At which you had attended?

A. Yes.

Q. Now, somewhere in between there, you and your counsel, Sydney Stein, went up to Colonel Buckingham's office?

A. Yes.

Q. What was the purpose of the visit, if you can recall it?

A. The purpose of discussing the partnership agreement,—or the new arrangement.

Q. Now, Mr. Marcuse, will you in your own way tell us everything you can recall about that visit, giving us as nearly as you can, if you cannot give it accurately, what took place at that visit.

A. To the best of my recollection, Mr. Stein outlined to Colonel Buckingham the facts, that there would be no further liability except the contribution, and the matter of special partnership would be the same as if it had gone through the original way. I cannot recall—

Q. That is what Mr. Stein told Colonel Buckingham?

A. Just—not those words, but that was the purpose of that visit.

Mr. Miller: Then I move to strike out the answer.

The Court: Strike out the purpose.

Mr. Ringer: You mean that portion of the answer just uttered by the witness, relating to the purpose?

Mr. Miller: Oh, no, I mean his whole answer, because he first went ahead to state what was said, and then he said in his next answer that he could not give the words, but that was the purpose of the meeting. So we get down to the point that he was stating what was his idea of their being there.

Mr. Ringer: He gave the substance of it.

663 The Court: Your adversary has stated the record as it now stands. You may put the question to him again.

Mr. Ringer:

Q. Do you recall with any greater degree of certainty the conversation that took place between you three men upon the occasion of that visit you have just referred to?

Mr. Platt: There were four men there, Mr. Ringer.

Mr. Ringer:

Q. Or the four men, yes.

A. Mr. Stein told these men that the scheme of forming a trust is advisable, and would not carry any liability beyond the amount of the contribution to the trust.

Q. Mr. Stein said that in the presence of Colonel Buckingham and Scott Brown?

A. To the best of my recollection.

Q. In your hearing?

A. Yes.

Q. Was anything said about a special partnership?

A. I don't know. I can't remember.

Q. Now, do you recall anything that was said by Colonel Buckingham to Mr. Scott Brown while you were there?

A. No, I cannot.

Q. Did you take any part in the conversation?

A. Very little.

Q. Was anything said about the amount of money which was to come from Mr. Scott Brown, or Colonel Buckingham, or their clients?

A. Yes, the amount of money was to be the same.

Q. The question is, was anything said, and, if so, by whom?

A. I don't remember, at that time, whether anything was said about the amount of money.

Q. Did this all take place before this final gathering, at which all the participants and their counsel were present,—this visit to Colonel Buckingham's office?

A. I think it did, although I am not sure.

Q. Now, can you recall what talk if any you had with Regensteiner on this subject of the change that took place?

A. I stated to him substantially the facts that I stated to the others.

Mr. Miller: I move to strike that out.

The Court: Strike it out.

Mr. Ringer:

Q. Did you talk to Regensteiner's lawyer about this matter?

664 A. Yes.

Q. Who was his lawyer?

A. Mr. Grollman.

Q. What did you tell him, and what did he say?

A. Oh, I can't remember.

Q. What is that?

A. I can't remember what I told him.

Q. Did you tell him about this New York Stock Exchange decision?

A. Yes.

Q. Did you map out to him the new plan which had been worked out?

A. Yes, I told him of those facts.

Mr. Miller: Can he cross-examine his own witness that way, your Honor? Is it fair to us to let him do that?

The Court: No, I don't think it is. I think the question is objectionable.

Mr. Miller: I don't want to be a nuisance here.

Mr. Ringer: May it please the court, I hardly think that the witness in a hearing of this kind——

The Court: It is objectionable for this reason: You are now dealing with the ultimate of this controversy, and that being true, my judgment is that considering this man's intelligence and his familiarity with the things he was dealing with, I do not think it is necessary to lead him this way.

Mr. Ringer: On this subject, however, let me make this point: This man is not our witness in the sense in which that term is understood. He is one of the alleged bankrupts. He is a hostile witness. He is in the same position that all the other alleged bankrupts are in here.

The Court: Then so far as has been disclosed, this witness has no sympathy or community of interest with this respondent in this petition?

Mr. Ringer: He has community of interest with them, he certainly has. He is put in the same class with them. It may be that financially he is not able to respond in the same way that they are, but he is one of the alleged bankrupts whose adjudication is being sought here. He is not our witness in the sense——

Mr. Miller: The difference is this:

The Court: I have got the difference, and I have the controversy in mind and the dispute. I don't say that there is any hostility between these men, but so far as money is concerned there
665 does not seem to be any community of interest between him and his co-respondent.

Mr. Ringer: If the contention of some of the respondents, as presented by their answers, is upheld, this man may be out of court in this proceeding, and his interest, instead of being hostile to the respondents, certainly form a very close tie and union of interest.

The Court: Well, go ahead. Do the best you can.

Mr. Ringer: I am trying to do that.

The Court: You are not under oath. You are a pretty good witness, but you haven't been sworn.

Mr. Miller: He is an excellent witness.

Mr. Ringer:

Q. What if anything did you do towards communicating the changed plan to Vette and Zuncker? What did you actually do?

A. I told Mr. Vette and Mr. Zuncker,—I told first their attorney—or may I correct that? I told Mr. Stein, I told Colonel Fore-

man and Mr. Robertson, and I told Vette and Zuncker when I saw them the same facts as I had told every one of the original signers.

Mr. Miller: I move to strike that out.

The Court: I will let that stand, Mr. Miller.

Mr. Ringer:

Q. What if anything did they say?

The Court: That is on this theory: Here are half a dozen men. There has been a shift in this arrangement. It has been established pretty clearly, or, at least, *prima facie*, that their minds are harmonious on a certain program at a certain time, to accomplish a certain result. By reason of a circumstance intervening when he went to New York, there was a shift in that situation. This man came back here and he went around and talked to these various people, all of them. I think I will let the answer stand.

Mr. Ringer:

Q. What if anything did they or either of them say, Vette and Zuncker, to you?

A. They were satisfied.

Q. Now, just tell us what you told Vette and Zuncker or either of them, or both of them together.

Mr. Miller: I thought you had just covered that by the answer the court let stand.

Mr. Ringer: Well, the answer was in general terms. He said "I told them the same things," and "the same things" was ruled out before, so I ask him to state again, if he recalls them.

666 Mr. Miller: The court ruled against me that time, and let it in.

The Court: I ruled with you the other time.

Mr. Miller: Yes.

Mr. Ringer: You ought to be satisfied with a fifty-fifty ruling.

Mr. Miller: What I mean is this: When they got that proof in a certain way, and the court let it stand, and I sat down and subsided like a quiet gentleman, they ought to be satisfied with what they got, and not start out to do it in some other way.

The Court: No, it does not tie him down to what he has got, if there is anything more he can get; by the rules of court he has a right to get it. Go ahead.

A. I told them that the firm as it stood today, as the contracts were signed up, would not be permitted to go ahead and do business as a firm, so far as the New York Exchange was concerned, and that I had to reorganize this firm, and that I had asked Mr. Hecht and Mr. Finn to act as special partners for all the others, if they were willing to contribute the same amount to that fund.

Mr. Ringer:

Q. And what, if anything, did they say to that, and mention the name of the person who said it, please.

A. That they were satisfied with Mr. Hecht and Mr. Finn as their representatives.

Q. That is, Vette and Zuncker?

A. Yes.

Q. Both of them?

A. Yes.

Mr. Miller: Now, he is leading and suggesting again.

Mr. Ringer: Not at all.

Mr. Miller: I suggest that he quit that.

The Court: The witness said "they" said.

Mr. Miller: Then he should have asked him "Who said?" He don't have to answer the question himself.

Mr. Ringer: I didn't answer. There was a rising inflection in my question. It was a question with an interrogation point.

Q. Did you ever talk to Mr. Hoffman about this modified plan?

A. Most of his talks were with Mr. Finn.

Q. Why do you answer it in that way, when I ask you if you ever talked to Mr. Hoffman?

A. I don't remember if I did.

667 Q. Well, is there any reason for your answering in that fashion?

A. Yes, there is.

Q. What is it?

A. The reason is that all my business transactions were with Mr. Scott Brown.

Q. What do you mean by all of your business?

A. In reference to Mr. Hoffman's contribution.

Q. During this entire interval, just prior to the formation of the partnership, being the time that we have just been discussing, you were trying to raise a very large sum of money for the purpose of buying the assets of the Von Frantzius estate, weren't you?

A. Yes.

Q. You had made a bid of approximately a million and a half dollars for the assets in the Probate Court?

A. Yes, sir.

Q. Of that estate?

A. Yes.

Q. Did you talk to any of these men whose names are being mentioned here, with reference to that subject matter?

A. Yes.

Q. With whom?

A. Do you want me to mention the different names?

Q. The names of the men who are interested in this proceeding as alleged bankrupts, if any there be, with whom you had that talk?

A. I talked to all of them, more or less, on the subject.

Q. How were they interested?

Mr. Miller: That is not for the witness to say.

The Court:

Q. How did you understand they were interested?

A. They were interested inasmuch as the formation of this partnership depended upon my carrying out that proposition.

Mr. Miller: I move to strike that out. That is his conclusion, and his reasoning process.

The Court: Overruled.

Mr. Ringer:

Q. The two Studebakers involved here were creditors of the Von Frantzius estate, were they not?

A. Yes.

Q. Vette and Zuncker were creditors, were they not?

A. No.

Q. Zuncker was?

A. I think not, no.

668 Q. Was Vette?

A. No.

Q. Was Regensteiner?

A. Yes.

Q. Was Hecht?

A. Yes.

Q. Was Finn?

A. Finn was, yes.

Q. Where were you going to get the \$1,450,000 which was to make up the purchase price of the Probate Court assets?

Mr. Miller: Is that material, your Honor?

The Court: I think what his plan was, that is preliminary, I assume, to questions thereafter or hereafter to be put, touching what he said to these various men on the subject, if anything. Is that your theory?

Mr. Ringer: Yes, your Honor.

The Court: Go ahead.

A. I procured the assignment of these claims against the Von Frantzius estate, and made a contract that if I were to procure 80 per cent of all the claims against the estate, that the 80 per cent would be permitted to purchase the remaining 20 per cent at the best price obtainable. If I then represented the entire estate, I would first procure discharge of bankruptcy proceedings against the estate, and through a contract with the administrators I would be enabled to purchase the securities that the estate had at that time in the Probate Court.

Mr. Ringer:

Q. Did Studebaker Brothers assign their claim to you?

A. Yes.

Q. Did the other parties whose names you have mentioned assign their claims to you?

A. Yes.

Q. That is, their claims against the Von Frantzius estate?

A. Yes.

Q. What about that bond of \$750,000? Did any of these men help you procure that bond?

A. No.

Mr. Ringer: That is all.

Mr. Moses: I have a few questions, if your Honor please.

669 Cross-examination by Mr. Moses:

Q. Did a notice go out of the Probate Court in the Von Frantzius matter to all the creditors in the Probate Court of the proposed entry of an entry in the Probate Court?

A. Yes.

Mr. Moses: I want to tender to Mr. Miller that notice merely as the form, which I desire to offer in evidence; and also the form of the trust certificate, in so far as certain of these defendants were interested in receiving such trust certificates from Mr. Marcuse as trustee.

Mr. Miller: I don't know anything about the notice, but I won't raise any question about this being a correct copy of the form of the certificate that he used to get the assignment from the creditors of the Von Frantzius estate.

Mr. Moses: Do you object to the notice as a notice?

Colonel Buckingham: Unless it is followed up by proof as to when the assets were turned over.

Mr. Moses: We will ask to have the trust certificate marked, if your Honor please, merely as a form.

Mr. Wormser: Those should be referred to in this hearing as the Von Frantzius-Marcuse trust certificate, as distinguished from the Hecht-Finn trust.

The trust certificate referred to was thereupon marked Petitioner's Exhibit 26, and is as follows:

Petitioners' Ex. 26.

Trust Certificate (No. —) Issued by Benjamin Marcuse.

Know All Men by These Presents, That I, Benjamin Marcuse, as Trustee, do hereby certify that — (hereinafter, for convenience, referred to as "holder") has, upon the execution hereof, assigned and transferred to me, as Trustee, all of his right, title and interest in and to all moneys, stocks, bonds and other securities and property held by the administrators de bonis non with the will annexed of the Estate of Frederick W. (alias Fritz) Von Frantzius, deceased, and I do hereby certify that I will hold all

property and assets of every kind so assigned and transferred to me upon and for the following trusts and purposes:

670 (1) That I will make such arrangements as may be necessary to procure from the Estate of Frederick W. (alias Fritz) Von Frantzius, deceased, or the administrators de bonis non with the will annexed of said estate, all of the money, property and assets so assigned and transferred to me by said holder and other persons executing similar assignments, and/or such part thereof as is now held by said administrators de bonis non, and/or such as the said estate may hereafter be entitled to receive, and for that purpose I will enter into such contract or contracts of indemnity as may be necessary, with the power and right to leave in the hands of the persons administering said estate such portion or portions of said moneys, assets and/or property as may be necessary for the purpose of procuring a transfer to me, as Trustee, either by sale, assignment or in such other manner as may be deemed necessary and advisable to procure the same, and for the purpose of protecting the interests of the said holder and the interests of other customers and creditors of the said Frederick W. (alias Fritz) Von Frantzius, deceased.

(2) That I will, out of the moneys and assets secured by me from said estate, on behalf of the holders of this and similar certificates, pay such moneys or deliver such property as shall be necessary in order to pay in full the amounts due from said estate to customers or creditors who shall fail or refuse to join in assigning their accounts to me, as Trustee, and who shall fail or refuse to accept certificates similar to this certificate. All moneys so paid or property so delivered shall be charged against the accounts of the holders of this and similar certificates pro rata in proportion to the value of the equities of their respective accounts against said estate.

(3) That I will organize a partnership (either limited or general), to be composed of persons who, with me, will enter into and engage in the business of buying and selling stocks, bonds, and other securities and commodities on commission, with sufficient funds to operate the same and with a capital of not less than Two Hundred Thousand (\$200,000) Dollars, in excess of my contribution to the capital of said firm. That I will be the managing partner of such firm and that I shall receive reasonable compensation for my services as such managing partner, and that I will not draw any sums in addition to such compensation until this and all similar certificates have been fully paid and redeemed. That I

671 will personally contribute towards the capital of said business all of the money and property possessed by me, not less, however, than the sum of Fifty Thousand (\$50,000) Dollars in cash, together with my memberships in the New York and Chicago Stock Exchanges, of the present market value of about Seventy-five Thousand (\$75,000) Dollars, so far as such exchanges will permit, and in the manner prescribed for the use of same by members of stock brokerage firms engaged in trading in stocks, bonds and other securities on the New York and Chicago Stock

Exchanges. That I will continue with said partnership, devoting all of my time, attention and best efforts to its business until this and all other similar certificates have been fully paid and redeemed; and that to secure the payment of this and similar certificates I will procure, if the same can be procured, policies of insurance upon my life, for the amount of not less than One Hundred Thousand (\$100,000) Dollars, payable to the holders of this and similar certificates, pro rata; premium on such insurance policies to be charged to the expenses of said firm.

(4) That upon the receipt by me of the said assets as aforesaid, I will turn the same over to said firm for the purpose of handling and liquidating the same in the usual course of business for the account of the said holder. That I or said firm will, within thirty (30) days after the said assets as aforesaid have been delivered to me, as Trustee, furnish to the holder of this and similar certificates, a true and correct financial statement of the condition of said trust account, and that so long as this and other similar certificates remain outstanding the holder of this and similar certificates shall, upon reasonable request, be entitled to examine the books (whether kept by me or said firm) showing the condition of said trust account.

(5) That immediately upon the liquidation of the said assets, I will cause said firm to make proper account thereof to said holder, and if upon the settlement of his said account with Von Frantzius & Company any deficiency shall arise, I hereby agree to, and do hereby obligate myself to, pay such deficiency, with lawful interest thereon, in full, out of any and all profits that shall accrue to me as a member of the said partnership so organized by me. That said profits so accruing to me as a member of said partnership shall be by me annually distributed among the holders of this and similar certificates, pro rata according to the deficiencies of each of such holders, and in the event of a winding up or liquidation of said partnership

my share of the assets thereof shall likewise be distributed
672 pro rata to the holders of this and similar certificates, according to their respective deficiencies and to the extent that may be necessary to pay such deficiency. It is fully and expressly understood, however, that no liability for any such deficiency shall exist against said partnership, but that all liability for the payment of such deficiency shall be limited to me personally, as aforesaid, and that I shall not be required to pay said deficiency except out of my share of the profits of the partnership and my interest in the assets thereof.

(6) The said assignment by said holder and this certificate shall not be effective unless and until customers of the said Von Frantzius, deceased, holding or owning claims aggregating eighty (80%) per cent in amount of the equities in all accounts due to customers from said Von Frantzius, deceased, shall assign their accounts and claims to the said Trustee, and accept certificates similar to this certificate within sixty (60) days from February 1, 1917.

(7) This certificate shall be assignable by endorsement hereon, but no transferee shall be entitled to any benefits hereunder except

upon surrender hereof and the issuance to such transferee of a new certificate in lieu thereof.

(8) The said holder, by the acceptance hereof, hereby expressly assents to all of the terms, conditions and provisions of this certificate and agrees that the said Trustee shall have all of the rights, powers and authorities herein and hereby vested in him.

In Witness Whereof, I, the said Benjamin Marcuse as Trustee, have hereunto set my hand and seal, this First day of February, A. D. 1917. (Sgd.) Benjamin Marcuse, Trustee. (Seal.)

Mr. Moses: Will you admit, Mr. Miller, that your client got one of these notices, that is, your clients, Mr. Hecht, Mr. Studebaker, Mr. Regensteiner and Mr. Zuecker?

Mr. Miller: I never heard tell of that notice before. That is, this is the first time that it has been called to my attention.

Mr. Moses: Can you make inquiry as to that, because otherwise we will have to make our formal proof, I suppose, by the records of the Probate Court.

Q. Did you have anything to do with the sending out of this notice personally?

A. No.

Mr. Miller: Maybe I can help Mr. Moses a little. When he offers his notice, makes his formal proof, I shall object to it on the ground that he cannot prove anything by a notice; the thing he will have to produce is a certified copy of the order of the Probate Court showing what was authorized and when it was authorized, and if the gentleman wants to do that, I will relieve him of the necessity by furnishing him here at this moment certified copies of those orders.

Mr. Moses: I am perfectly willing to accept the offer. I think we ought to have certified copies of the orders, if counsel has them, turning the properties over. Let me go on in the meantime with something else.

Mr. Miller: I will have them right now for you. Mr. Moses, here is a certified copy of the petition of the administrator in the Von Frantzius estate, asking for leave to make the arrangement, and here are certified copies of four orders that were entered in connection with it, the original and then orders extending the time from time to time, beyond the time allowed in the original order to put the matter through.

Mr. Moses: Well, we are willing, if your Honor please, and do offer them in evidence.

(The documents referred to were thereupon marked Petitioning Creditors' Exhibits 27, 28, 29, 30 and 31 respectively, and are as follows):

Petn. Ex. 27.

Filed May 28, 1917. John A. Cervenka, Clerk.

STATE OF ILLINOIS,
County of Cook, ss:

In the Probate Court of Cook County.

Docket 164, Page 162.

In the Matter of the Estate of FREDERICK W. VON FRANTZIUS,
Deceased.

Now comes Charles A. Macdonald and Gustave F. Fischer, Administrators of said estate, and respectfully, show unto the court that Benjamin Marcuse, of Chicago, who was formerly the partner of Frederick W. Von Frantzius, deceased, has been endeavoring to formulate a plan which will enable him to acquire some of the assets of this estate and continue the business formerly conducted by the said deceased through a new firm to be formed by him 674 for that purpose, and to provide for distribution to creditors of a portion of their claims; that these administrators have had numerous conferences with the said Marcuse and his attorneys which have resulted in Mr. Marcuse making to these administrators a proposal in writing, a copy of which is hereto attached and made a part hereof and marked Exhibit "A."

These petitioners further represent unto the court that they are anxious to take such steps looking to as early a partial distribution to creditors as may be possible with due regard to the best interests of the estate in so far as the same may be done with safety to themselves.

Wherefore, your petitioners pray that an order may be entered authorizing your petitioners to accept the said proposal of the said Benjamin Marcuse according to the terms and conditions thereof, and to sell to the said Benjamin Marcuse the assets of said estate mentioned and described in the schedule to the proposal of said Benjamin Marcuse as set forth in this petition, for the sum of one million four hundred and fourteen thousand six hundred and sixty dollars and fifty-four cents (\$1,414,660.54), according to the conditions of said proposal; that upon the payment of said purchase price to your petitioners, and the approval by this court of a bond in the sum of seven hundred fifty thousand dollars (\$750,000), conditioned as provided in said proposal of said Benjamin Marcuse, and the performance by the said Benjamin Marcuse of all of the other conditions and provisions of the said proposal, that the administrators made a partial distribution ratably on the amount for which their respective claims may have been allowed in the Probate Court among the creditors so listed as known creditors, in the schedule attached to said proposal of Benjamin Marcuse of the sum of one million two hundred and fifteen thousand three hundred and seventy dol-

lars and eighteen cents (\$1,215,370.18), in accordance with the provisions and conditions of the said proposal of the said Benjamin Marcuse, and that such other orders may be entered in the premises as the court deems proper.

And your petitioners will ever pray. Charles A. Macdonald, Gustave F. Fischer, Administrators. Harry Rubens, E. J. Mosser, Harry H. Barnum, Attorneys for Administrators.

675 STATE OF ILLINOIS,
County of Cook, ss:

Charles A. MacDonald, being duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, and verily believes the same to be true. Charles A. Macdonald.

Subscribed and sworn to before me this 26th day of May, A. D. 1917. Mary V. Lyons, Notary Public. (Seal.)

To Messrs. Charles A. MacDonald and Gustave F. Fischer, administrators de bonis non with will annexed of the estate of Frederick W. Von Frantzius, deceased.

DEAR SIRS: I hereby offer to pay you within thirty (30) days after the entry of a final order by the Probate Court authorizing your acceptance of this proposal upon the terms herein provided, the sum of One Million Four Hundred and Fourteen Thousand Six Hundred and Sixty Dollars and Fifty-four cents (\$1,414,660.54) in cash for the interest of the Administrators De Bonis Non With Will Annexed of the Estate of Frederick W. Von Frantzius, deceased, in the personal assets of the Estate of Frederick W. Von Frantzius, deceased, as per schedule attached, plus interest which may have accrued on all bonds enumerated in said schedule up to the 31st day of March, 1917, upon the following conditions:

First. It is agreed that my offer is based on the price of

Bethlehem Steel	"A"	at	135
"	"	"B"	" 130
Wabash Pfd.	"A"	"	50
"	"	"B"	" 25 and

that if the closing price or prices, quotation or quotations on such stocks enumerated above and in said schedule, or any of them, according to the New York *York* Stock Exchange or other market quotations on the day preceding the date upon which such sale is consummated and the full purchase price paid, exceed the prices above and in said schedule set forth, at which said stocks were respectively figured, such excess in price on all of such stocks

676 above and in said schedule mentioned shall be added to the purchase price of One Million Four Hundred and Fourteen Thousand Six Hundred and Sixty Dollars and Fifty-four Cents (\$1,414,660.54) to be paid by me.

Second. That I will also pay and satisfy in full all claims for moneys due on open accounts (including commissions on trades made for your account as Administrators) notes and other evidences of indebtedness held by all correspondents and banks with whom the said deceased personally, or the firm of Von Frantzius & Co., has heretofore done business, and all obligations to deliver stocks and securities and all other obligations to such correspondents and banks, and obtain proper receipts and releases therefor to the estate, and yourselves as Administrators.

Third. That I will obtain a full and complete release of the estate and of yourselves as Administrators of and from all liability for past or future rent or other obligations accrued or to accrue under and any and all leases made by the deceased or the firm of Von Frantzius & Co. with the Corn Exchange National Bank, and that I shall also assume and fully pay all contracts for furnishing the offices demised under said leases and hold and keep this estate and yourselves as Administrators free and harmless therefrom.

Fourth. That I will give you a good and sufficient bond with one or more surety companies acceptable to you as sureties, in the sum of Seven Hundred Fifty Thousand (\$750,000) Dollars, conditioned to pay to you on demand any and all sums of money required or necessary to enable you to make a distribution among all creditors according to law in the event that any claims are filed and allowed against the estate, or upon which judgment may be obtained against the Administrators in addition to or in excess of those claims enumerated in the schedule hereinafter described.

Said bond shall have such further conditions as may be prescribed by either you or the Judge of the Probate Court of Cook County, as you or he may deem expedient for your full protection.

Fifth. That all of the claims against this estate of the now known creditors set forth in said schedule hereinafter described shall be duly verified, filed and allowed in the Probate Court of Cook County, and I will obtain the consent of all of said creditors that their said claims be allowed by said court as of the seventh class. If any appeal

677 is taken from any order of said court in allowing, or disallowing, increasing or decreasing, classifying or re-classifying said claims, or any of them, I will deposit with you on demand, in cash, or in such form of collateral as you may designate, such sum as you may require to secure the payment of any final judgment or decree that may be entered upon or by reason of such appeal, together with all costs and expenses which may be incurred, provided, however, that you shall not be required to appeal from any order of the Probate Court of Cook County, except upon my direction in writing.

Sixth. That I will obtain and deliver to you from such of the known creditors as are set forth in said schedule, as you may designate, either in his, her or its or their individual capacity or through me, as his, her, its or their representative or assignee, duly authorized by a full, complete and unconditioned assignment or power of attorney in a form to be acceptable to you, an absolute and unconditional acceptance of the sale, and plan of distribution herein pro-

posed by me, also a waiver of notice and consent to the hearing of your final account, and a receipt for the proportionate amount on each of said claims.

Seventh. That I will obtain the dismissal of the bankruptcy proceedings now pending or any other bankruptcy proceedings which may be begun against the firm of Von Frantzius & Co., the Administrators De Bonis Non With Will Annexed of the Estate of Frederick W. Von Frantzius, deceased, or myself.

Eighth. That all known creditors and the amount of their respective claims against this estate are fully set forth and enumerated in the schedule hereunto attached, entitled, "Known Creditors," and that upon my full compliance with the foregoing conditions you will make a partial distribution, ratably on the amount for which their respective claims may have been allowed in the Probate Court, among said creditors so listed as known creditors, of the sum of One Million Two Hundred and Fifteen Thousand Three Hundred and Seventy Dollars and Eighteen Cents (\$1,215,370.18), and as to those creditors on whose behalf I deliver to you a full, complete and unconditioned assignment to me or a power of attorney to me in a form acceptable to you, you will pay to me as such assignee or attorney in fact the proportionate distribution of said amount to which such creditors so assigning to me or appointing me as attorney in fact are entitled, free from any obligation on your part to look to the application or distribution of the same, or any part thereof, to
678 said creditors so assigning to me or so appointing me as attorney in fact.

Ninth. That you shall have the right to sell any or all of the said assets of the estate at fair value or market price thereof, at any time before the final consummation of the sale thereof to me hereunder, if in your judgment such action is required for the best interest of the estate or by the order of the Probate Court. In the event of any such sale being or having been made by yourselves, or in the event of any such sales being or having been made by any of the banks or correspondents hereinbefore referred to, since March 31, 1917, it is agreed that I shall purchase the remainder of said assets enumerated in said schedule under the same terms and conditions as herein provided, except that in that event the purchase price to be paid by me shall be diminished to the extent of the amount realized by you from such sale or sales of such of the assets as may have been free in your hands, and in case of sale of securities held as collateral by banks or correspondents, or the delivery of stocks or securities by you in satisfaction in whole or in part of any obligation to such banks and correspondents, the amount to be paid by me shall be increased by the amount of increase in the equity of the estate resulting from such sale or delivery of stocks or securities.

Tenth. That the statement in said schedule of the amount and nature of any claim shall not be deemed as any admission as to the correctness thereof.

Eleventh. That the sureties on your bond as Administrators shall consent to the plan of sale and distribution hereinabove set forth.

Twelfth. I hereby agree to protect and save you harmless from and against any loss, damage, cost or expense which you may sustain or incur either as individuals or in your representative capacity, growing out of your acceptance of this proposal, or on account of or connected with anything done by you in carrying out the sale and distribution provided for herein, and agree that I will not for myself or any of my principals or assignors make any claim against you either as individuals or in your representative capacity, for any loss, damage, cost or expense which I may sustain or incur growing out of or in connection with any act done by yourselves, me or any other person in the carrying out, or attempted carrying out, of the sale, distribution and plan herein provided for in case the said
679 sale, distribution and entire plan herein provided for shall or shall not for any reason be finally consummated. Benjamin Marcuse. Chicago, May 26, 1917.

COUNTY OF COOK, ss:

I, John F. Devine, Clerk of the Probate Court of Cook County and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the annexed and foregoing to be a true and correct copy of Petition of Charles A. Macdonald and Gustave F. Fisher with copy of proposal attached thereto, filed herein on the 28th day of May, A. D. 1917, in the matter of the Estate of Frederick W. Von Frantzius, deceased, as appears from the original on file and from the records of the Probate Court in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Probate Court, at my office, in the City of Chicago, in said County, this 28th day of April, A. D. 1920. John F. Devine, Clerk of the Probate Court. (Seal.)

Petitioners' Ex. 28.

STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, that on the 28th day of May, A. D. 1917, the same being one of the days of the May Term, 1917, of the Probate Court of Cook County, present thereat: Honorable Henry Horner, Judge; John F. Traeger, Sheriff; John A. Cervenka, Clerk, the following, among other proceedings, were by and before said Court had, and entered of record, to wit:

Docket 164, Page 162.

In the Matter of the Estate of FREDERICK W. VON FRANTZIUS,
Deceased.

Order.

This matter coming on to be heard upon the petition of the Administrators De Bonis Non With Will Annexed, and the
680 court having considered said petition and the proposal of Benjamin Marcuse therein contained, and being fully advised in the premises; and having heard arguments of counsel,

Doth Order that said administrators be, and they hereby are, authorized and directed to accept the said proposal of the said Benjamin Marcuse according to the terms and conditions thereof, and to sell to said Benjamin Marcuse the assets of said estate mentioned and described in the schedule to the said proposal of Benjamin Marcuse set forth in the said petition for the sum of one million four hundred and fourteen thousand six hundred and sixty and 54/100 dollars (\$1,414,660.54) according to the conditions of said proposal, and that upon the payment of the said purchase price to the said administrators, and the approval by this court of a bond in the sum of seven hundred fifty thousand (\$750,000) dollars, conditioned as provided in the said proposal of said Benjamin Marcuse, and the performance by the said Benjamin Marcuse of all of the other conditions and provisions of the said proposal, that the administrators make a partial distribution ratably on the amount for which their respective claims have been allowed in the Probate Court among the creditors so listed as "known creditors," in the schedule attached to said proposal of Benjamin Marcuse of the sum of one million two hundred and fifteen thousand three hundred and seventy and 18/100 dollars (\$1,215,370.18), in accordance with the provisions and conditions of the said proposal of the said Benjamin Marcuse, Unless objections in writing shall be filed in this court to the said proposal, sale and distribution and to this order on or before June 12, 1917; provided, that a copy of this order, of the said petition of the said Administrators De Bonis Non With Will Annexed, and of the said written proposal by Benjamin Marcuse, omitting the schedules thereto attached, be mailed to all of said "known creditors" of said decedent and to the heirs at law of the said decedent, within three (3) days from the entry of this order.

It Is Further Ordered that hearings on any objections which may be so filed shall be and are hereby set down for hearing before this court on the 15th day of June, A. D. 1917, at 2 o'clock P. M., at which time, if no objections shall be filed, this order shall be and become a final order herein.

681

Backer.

STATE OF ILLINOIS,
County of Cook, ss:

I, John F. Devine, Clerk of the Probate Court of Cook County, in the State of Illinois aforesaid, do hereby certify that the within is a true transcript of the proceeding had before said Court in the matter of the estate of Frederick W. Von Frantzius, deceased, entered herein on the 28th day of May, A. D. 1917.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Probate Court at Chicago, in said County, this 28th day of April, A. D. 1920. John F. Devine, Clerk. (Seal.)

Probate Court of Cook County. Estate of Frederick W. Von Frantzius, deceased. Certified copy of proceedings and order of Court. Entered May 28th, 1917. John A. Cervenka, Clerk.

Petitioners' Ex. 29.

STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, that on the 15th day of June, A. D. 1917, the same being one of the days of the June Term, 1917, of the Probate Court of Cook County, present thereat: Honorable Henry Horner, Judge; John Traeger, Sheriff; John A. Cervenka, Clerk, the following, among other proceedings, were by and before said Court had, and entered of record, to-wit:

Docket 164, Page 162.

In the Matter of the Estate of FREDERICK W. VON FRANTZIUS,
Deceased.

Order.

This matter coming on again to be heard on the petition of the administrators De Bonis Non With Will Annexed, heretofore filed herein on to wit: the 28th day of May, 1917, and it appearing to the court that an order was entered herein on the 28th day of May, 1917, authorizing and directing the said administrators to accept the proposal of the said Benjamin Marcuse, attached to the said petition, unless objections in writing be filed in this court to said sale, distribution, and to the said order on or before the 12th day of June, 1917, provided that a copy of the said order and the said petition of the said administrators De Bonis Non With Will Annexed, together with the said written proposal of said Benjamin Marcuse be mailed to all said known creditors of said decedent and the heirs at law of said decedent within three days after the entry of said order of May 28th, 1917, and

It further appearing to the court that a copy of the said order, of the said petition of the said administrators, and the said written proposal of Benjamin Marcuse, omitting the schedules thereto attached, were mailed to all of said known creditors of said decedent, and to the heirs at law of said decedent within three days after the entry of said order, and

It further appearing to the court that the only objections to said orders filed herein were the written objections filed in this court on the 12th day of June, 1917, by John Mueller and by Raymond H. Lang, and said two objections have been withdrawn in open court by attorneys representing said claimants.

Now Therefore, it is hereby ordered, that the said order of May 28th, 1917, be and the same is hereby ratified and confirmed and the said order is hereby declared to be a full and absolute order herein.

Backer.

STATE OF ILLINOIS,

County of Cook, ss:

I, John F. Devine, Clerk of the Probate Court of Cook County, in the State aforesaid, do hereby certify that the within is a true transcript of the proceedings had before said Court in the matter of the estate of Frederick W. Von Frantzius, deceased, entered herein on the 15th day of June, A. D. 1917.

In Witness Whereof, I have hereunto set my hand and 683 affixed the seal of said Probate Court at Chicago, in said County, this 28th day of April, A. D. 1920. John F. Devine, Clerk. (Seal.)

Probate Court of Cook County. Estate of Frederick W. Von Frantzius, Deceased. Certified copy of proceedings and order of Court. Entered June 15th, 1917. John A. Cervenka, Clerk.

Pet. Ex. 30.

STATE OF ILLINOIS,

County of Cook, ss:

Be it remembered, that on the 14th day of July, A. D. 1917, the same being one of the days of the July term, 1917, of the Probate Court of Cook County, present thereat Honorable Henry Horner, Judge; John E. Traeger, Sheriff; John A. Cervenka, Clerk, the following, among other proceedings, were by and before said Court had, and entered of record, to wit:

Docket 164, Page 162.

In the Matter of the Estate of FREDERICK W. VON FRANTZIUS,
Deceased.

Order.

This matter coming on to be heard again upon the motion of the Administrators' De Bonis Non herein, and it appearing to the Court that an Order was entered herein on the 28th day of May, 1917, on the Petition of the Administrators, authorizing and directing the Administrators to accept the certain proposal of Benjamin Marcuse thereto attached, and to make sale of certain assets of the Estate to him and to make a certain distribution to creditors in accordance with the provisions and conditions of the said proposal and that such Order was confirmed and ratified by a further Order of this Court entered herein on the 15th day of June, 1917, and it further appearing to the Court that by the terms of said proposal, the said Marcuse offered to purchase said assets within (30) days from the

entry of such final Order of the Probate Court and to give
684 a good and sufficient bond with one or more Surety Companies acceptable to the Administrators, conditioned as provided in said proposal, and it further appearing to the Court that said Marcuse has not yet furnished the Administrators with the said bond, but said Marcuse believes that he will be able to do if the time for complying with the terms of said proposal be extended by the Administrators as hereinafter in this Order provided.

Now Therefore, the Court doth hereby Order that the Administrators be and they are hereby authorized to grant to the said Marcuse such further time not exceeding ten (10) days as they may deem necessary or expedient to carry out said proposition for the purchase of certain assets of the said Estate, in accordance with the terms, conditions and provisions of his said proposal attached to said Petition of the Administrators, and in accordance with the aforesaid Orders entered herein.

Backer.

STATE OF ILLINOIS.

County of Cook, ss:

I, John F. Devine, Clerk of the Probate Court of Cook County, in the State aforesaid, do hereby certify that the within is a true transcript of the proceedings had before said Court in the matter of the estate of Frederick W. Von Frantzius, deceased. Entered herein on the 14th day of July, A. D. 1920.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Probate Court at Chicago, in said County this 25th day of April A. D. 1920. John F. Devine, Clerk. (Seal.)

Probate Court of Cook County. Estate of Frederick W. Von Frantzius, Deceased. Certified copy of proceedings and order of Court. Entered July 14th, 1917. John A. Cervenka, Clerk.

685

Pet. Ex. 31.

STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, that on the 23rd day of July, A. D. 1917, the same being one of the days of the July Term, 1917, of the Probate Court of Cook County, present thereat Honorable Henry Horner, Judge; John E. Traeger, Sheriff; John A. Cervenka, Clerk, the following, among other proceedings, were by and before said Court had, and entered of record, to wit:

Docket 164, Page 162.

In the Matter of the Estate of FREDERICK W. VON FRANTZIUS,
Deceased.

Order.

This matter coming on again to be heard upon the motion of the Administrators De Bonis Non herein, and it appearing to the Court that certain Orders were entered herein on the 28th day of May, 1917, and on the 15th of June, 1917, authorizing the Administrators to accept a certain proposal of Benjamin Marcuse, attached to a Petition filed by the Administrators herein on the 28th day of May, 1917, and it further appearing to the Court that an Order was entered herein on the 14th day of July, 1917, extending the time for the performance of said proposal for ten days from said date, and it further appearing to the court that said Marcuse now represents to the Court that he has arranged for the giving of the bond provided for in said proposal and that it will take several days for the purpose of arranging the necessary details for the fulfillment of said proposal.

Now Therefore, the Court doth hereby order that the Administrators be and they are hereby authorized to grant to the said Marcuse such further time not exceeding ten days from this date as they may deem necessary or expedient for the purpose of permitting him to complete his arrangements and to carry out said proposition for the purpose of certain assets of the said estate in accordance with the terms, conditions and provisions of his said
686 proposal attached to said Petition of the Administrators, and in accordance with the aforesaid Orders entered herein.

Backer.

STATE OF ILLINOIS,
County of Cook, ss:

I, John A. Cervenka, Clerk of the Probate Court of Cook County, in the State aforesaid, do hereby certify that the within is a true transcript of the proceedings had before said Court in the matter of the estate of Frederick W. Von Frantzius, deceased, entered on the 23rd day of July, A. D. 1917.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Probate Court at Chicago, in said County, this 28th day of April, A. D. 1920. John F. Devine, Clerk. (Seal.)

Probate Court of Cook County. Estate of Frederick W. Von Frantzius, deceased. Cerified copy of proceedings and order of Court. Entered July 23, 1917. John A. Cervenka, Clerk.

Mr. Moses: Will you further admit that your clients had notice of the intended entry of these orders?

Mr. Miller: I will ask my clients, and if they got the notices, then I will admit it.

Mr. Moses: I mean, your clients who are creditors of the Von Frantzius estate.

Mr. Miller: Yes, I will find out about that and give you the benefit of the admission, if they tell me that they got them.

Mr. Moses:

Q. Now, drawing your attention particularly—

Mr. Miller: Have you offered these in evidence?

Mr. Moses: Yes, they have been marked.

Q. (Continuing:) particularly to the date June 30, 1917, and to a meeting of gentlemen at the office of Marcuse & Company on that date, do you recall such a meeting?

A. Yes.

Q. About when on that day was that meeting held?

A. I think about 11 o'clock.

687 Q. Who was there?

A. Mr. Sydney Stein, Mr. Robertson, Mr. Hecht, Mr. Finn, myself, Mr. Morris—I don't recall if anybody else was there. I recall these men, inasmuch as certain documents were to be signed on that date.

Q. Was Mr. Regensteiner there, to your recollection?

A. I don't recollect.

Q. Was Mr. Zuncker there, to your recollection?

A. I don't recollect.

Q. Was Mr. Vette there?

A. No.

Q. You are sure that the others were there?

A. I am pretty certain the others were there.

Q. Were there any other of the lawyers there than Mr. Stein and Mr. Robertson?

A. I think Mr. Eli Mayer was in the office at some time on that day.

Q. Was Mr. Hoffman there?

A. Mr. Hoffman may have been there.

Q. Was Mr. Scott Brown there?

A. No, I think not.

Q. Were they all together at one time?

A. To the best of my recollection, Mr. Hoffman came over and left. I don't think they were all over there at one time.

Q. Did you see a number of checks on that day, delivered?

A. Yes.

Q. Whose checks were delivered on that day?

A. Mr. Hoffman brought a check over. That is the reason I said Mr. Hoffman,—I think he brought a check over for \$50,000.

Q. And delivered it to whom?

A. To me. He delivered it in my private office. I want to amend that,—not to me: He delivered it in my private office to Mr. Stein and I, who were present. Mr. Finn delivered the check for—do you want me to state the amount?

Q. Never mind stating the amount. I just want to know who delivered the check that you saw there that morning, delivered.

A. Mr. Hecht and Mr. Morris and myself. The rest of them I think were sent in through their lawyers.

Q. Was Mr. Finn there?

A. Yes.

688 Q. Did he deliver a check on that morning?

A. I think he did.

Q. Well, then you know that Mr. Finn's check, Mr. Hecht's check, Mr. Hoffman's check,—did you see any other check?

A. Yes.

Q. Whose?

A. Mr. Vette and Zuncker.

Q. Who had their checks?

A. Mr. Robertson had delivered their checks, because all the checks were there that day.

Q. And Mr. Morris's check, is that right?

A. And Mr. Morris's check.

Q. That was about 11 o'clock in the morning?

A. Yes.

Q. Well, now, were those checks delivered before or after the close of banking hours?

A. They were delivered between 11 and 12; I believe before banking hours.

Q. But the transaction—

A. The transaction took so long that before they were turned over to the cashier it was too late to deposit them.

Q. What papers were signed on that day in the office?

A. The partnership contract and the recorder's notice, to my knowledge.

Q. You mean the recorder's certificate?

A. Certificate, yes.

Q. That is, you mean the instrument dated—or purporting to bear date April 2nd, 1917, being the limited partnership agreement between Ben Marcuse and Mr. Morris, Frank A. Hecht and Joseph M. Finn, petitioner's Exhibit 3, was signed on that day, was it?

A. Yes.

Q. And this certificate, Petitioner's Exhibit 4, that was signed on that day, was it?

A. Yes, sir.

Q. Henry Sanford, the Notary Public, was he a member of your office force?

A. Yes.

Q. And petitioner's Exhibit 6, the so-called Hecht-Finn trust agreement, was that signed on that date and upon that occasion?

A. Yes, those were all signed on that day.

689 Q. So they were all signed at one and the same time?

A. Yes.

Q. And within a few minutes of each other?

A. Yes.

Q. Now, did Mr. Hecht have any talk with you with respect to the use to be made of his check on that occasion?

Mr. Miller: Who, please.

Mr. Moses: Mr. Hecht.

A. Yes, he stated that he wanted to arrange additional deposits in this bank before putting this check through.

Q. What did you say to that?

A. I consented to that.

Q. Well, what did you say? Don't use the word "consent." What did you say to him?

A. I said, "You want me to hold this check for a few days?" He said, "Yes."

Q. What did you say?

A. I said, "All right. Then you make"—I said, "You make arrangements, and let me know so that I can put it through."

Q. And did you have, later during the month, from time to time, other conversations with Mr. Hecht on the subject of that check?

A. I turned a check over to our cashier and advised him to hold that check until further notice, and I don't think that I asked about that check oftener than once or twice.

Q. Asked whom?

A. Asked Mr. Hecht.

Q. What did you say upon the occasions that you asked him?

A. "Shall I put this check through now?"

Q. And what did he say, on the first occasion?

A. I think he said, "Yes, I will take care of it tomorrow."

Q. Now, did you have another occasion when you inquired about the check?

A. No, I don't think so. I think our cashier asked him, finally, if he could put that through, and he did put it through then.

Q. Was that inquiry of the cashier in your presence, while he was there?

A. No, I think not.

Q. So that you only inquired once?

690 A. Yes.

Q. Will it refresh your recollection to know that that check was not deposited finally until the 31st day of July?

A. Yes, I recall that our cashier, or our manager, spoke to me about it, spoke to me during the latter part of the month, that it was necessary to put that check through, and I told him to advise Mr. Hecht, and Mr. Hecht told him to put it through then.

Q. Now, do you recall a conference that took place some time after the formation—or after June 30, between you and Mr. Leo Wormser, concerning a proposed claim or suit to be brought on behalf of Dr. Abt?

A. Yes.

Q. When did that take place?

A. Sometime during 1918, I think.

Q. 1918?

A. The latter part of 1918.

Q. Whom did Mr. Wormser claim to represent in that conversation?

Mr. Platt: I don't see how that is any more material from this witness than it was from Mr. Wormser himself.

Mr. Moses: For this reason, if the court please: Under Section 11,—I don't know that I am going to be able to make the proof, but these gentlemen are endeavoring to get rid of this liability by reason of Section 11 of the new act.

Mr. Platt: Let me interrupt counsel. If he will say here as a member of this bar that he proposes to show that any such information was given either to Mr. Hecht or to Mr. Finn, then so far as they are concerned, I will immediately withdraw the objection. I want to have him state it as a member of this bar.

Mr. Moses: I cannot make that promise, if the court please, because I cannot tell what the witness will testify to on that subject. The witness is not our witness. All we can do is to do the best we can for the purpose of getting the information. Now, he may deny it.

The Court: On what theory is this Wormser's statement admissible?

Mr. Moses: On the theory that he says he was approached by Mr. Wormser, that it was presented to him by Mr. Wormser, as we expect to prove by him, and Mr. Wormser claims that the new limited Copartnership Act had not been complied with, and that Messrs.

691 Hecht and Finn were liable as copartners, and if I can bring home to Messrs. Hecht and Finn, through Marcuse, that claim, then the position taken by counsel here, that they had made a tender to the court of the profits that had been taken, at the earliest amount the act contemplates, would not be sound.

The Court: In order to make it competent, it would be necessary, according to your statement, to show by this witness, that he did communicate with Hecht and Finn. You had better get to that first.

Mr. Moses: I have first got to show what the claim was that Wormser made to him, it seems to me, before I can proceed further and ascertain whether he made any such statement.

The Court: You can ask him as a preliminary question whether he had any such talk.

Mr. Wormser: I presume it is conceded by all counsel that I did not represent Mr. Marcuse at any time prior to March 13, 1920. Is there any question about it?

Mr. Miller: Not if you say so, so far as we are concerned.

Mr. Moses:

Q. After your talk with Mr. Wormser, wherever that talk was, did you have talks with Mr. Hecht on the subject matter of what Mr. Wormser said to you?

A. No.

Q. Did you mention to Mr. Hecht at all anything that had been stated to you by Mr. Wormser?

A. No.

Q. In other words, do I understand you to mean, Mr. Witness, that at no time did you state, or give any information to Mr. Hecht as to what it was claimed by Mr. Wormser the fact was with respect to that partnership?

A. I did not.

Q. Did you have a conversation with anybody on the subject?

A. Yes.

Q. With whom?

Mr. Platt: Unless it was with Mr. Hecht or Mr. Finn, I shall object.

The Court: This question is proper.

Mr. Moses: It may have been with Sydney Stein.

The Court: This question is proper.

Q. With whom did you talk about it?

A. With Mr. Engstrom and with a party in Mr. Stein's office.

Mr. Moses:

Q. What was the name of that party?

A. Mr. Cohn.

692 Q. Ezra Cohn?

A. Yes, sir.

Q. And how soon after the talk with Mr. Wormser was that talk had with Mr. Cohn?

A. Immediately.

Q. And what did you say to Ezra Cohn?

Mr. Platt: Now, to that, if your Honor please, I object.

The Court: Is Mr. Cohn a lawyer in Stein's office?

A. Yes.

Mr. Moses: Now, we have a situation where the same counsel, I don't mean to say now Mr. Stein alone, but the firm of Stein, Mayer & Stein represents both Mr. Marcuse and Mr. Hecht in this transaction, as I understand it, and it seems to me that if we can bring home to the lawyer who occupies that dual capacity, information of that kind, that we are now seeking to bring home, that the information would be competent to be received.

Mr. Platt: That wouldn't be the law, because if the evidence, the statement which it is proposed to be brought home, was an evidence, a statement that would tend to show a gross dereliction of duty on the part of the attorney who represented Mr. Finn,—there is no evidence that they represented Mr. Hecht; now that is the same rule, when you apply that to a lawyer, as applies to an officer of a corporation, namely, that where the communication made to the officer of the corporation or to the lawyer is one which it would be against his interest to communicate to his employer or to the corporation of which he is an officer,—in other words, where his interest would be to suppress the information because it would subject him to a liability, when he will not be presumed to have communicated it to his client, nor will it be presumed to have been known to the corporation of which he is an officer. That is a perfectly clearly recognized rule, repeated a thousand times in the case of a corporation, and I submit the reason of the rule applies with equal force here. In other words, if Mr. Marcuse communicated to a member or to an employee of the firm of Stein Mayer & Stein information which showed that they, in purporting to create a special partnership for Joseph M. Finn, through ignorance of the law, or through carelessness or for any other reason—or from carelessness or from any other reason, had formed a partnership which did not comply with the law regarding special partnership, they would not be presumed to have communicated that to their clients. Unless, as I say here, if

693 Mr. Cohn or anybody else in the world will come on the stand and say that they communicated that, or any suspicion of it, in fact, to Mr. Finn, I shall withdraw every objection to it, but I say that the rule that might exist, that information to a lawyer is information to his client, does not prevail where that information is information of a dereliction of duty on the part of the lawyer. I think that is well recognized.

The Court: I will overrule the objection.

Mr. Platt: And what I have said, I have said without any desire to throw any imputation on the firm of Stein, Mayer & Stein, but merely for the sake of argument.

Mr. Moses: I want to say the same thing there, that the purpose of the inquiry is not for the purpose of throwing any imputation on anybody.

The Court: Answer the question.

Mr. Moses: The question is, what you stated to Mr. Ezra Cohn.

A. I asked him to look up the law of the point that Mr. Wormser raised.

Q. What did you tell him the point was that Mr. Wormser raised?

A. That the special partners might be held general partners, if it came to an issue.

Q. What else did you say to Mr. Cohn?

A. That Mr. Wormser raised the point that a new law had gone into effect on July 1st, 1917, whereby a special partner—whereby there could be no special partnerships in the brokerage business, and as I thought at the time it was a legal argument on the part of Mr. Wormser, I still felt sufficiently disturbed to ask Mr. Cohn to look up the law on that point.

Q. Yes.

A. But I gave no further attention to it, as I thought after all it would be only a legal question and I would not disturb any of the partners.

Q. Now, won't you tell us everything you said to Mr. Cohn on the subject?

Mr. Platt: Of course my objection goes to all of these questions, without repeating it, your Honor.

A. I asked him to see if there was such a law.

Mr. Moses: 's

Q. Did you tell him about your talk with Wormser?

A. Yes.

694 Q. What did you tell him Wormser had said?

The Court: He has said that he told Cohn that Wormser had told Marcuse that there was a new law on the subject, the effect of which might be, or would be to make Hecht and Finn liable as partners.

Mr. Moses: He did not state it that way.

The Court: That is what his evidence meant to me.

The Witness: Yes.

Mr. Moses: All right, if that is understood to be the evidence.

A. (Continuing:) He also stated to me——

Q. No, I want you to tell us what you stated to Mr. Cohn Mr. Wormser had stated to you?

A. Yes, that is what I said to Mr. Cohn.

Q. Now, what else did you state to Mr. Cohn that Mr. Wormser had stated to you?

A. I also stated that he had looked up the records and found that the partnership was recorded on July 2nd.

Q. What else?

A. That is all.

Q. Now, when was that talk with Mr. Cohn?

A. Immediately after Mr. Wormser left our office.

Q. And what time, with respect to the month or the date of the month, or of the year?

A. Oh, that must have been probably in October or November, 1918.

Q. Now, did you have any further talk with Ezra Cohn on that subject?

A. Yes, I asked him to report to me, and he reported to me that there might be a question raised, but I did not go into it very thoroughly with him, and the subject was dismissed.

Q. When after you first talked with Mr. Cohn did he tell you that there might be a question raised?

A. He said that there might be a question as to—there might be some good ground for his statement, for Mr. Wormser's statement.

Q. When did he say that to you?

A. Oh, perhaps a few days later.

Q. Now, is that all that transpired between you and Mr. Cohn?

A. That is all that transpired.

Q. On that subject, on any occasion?

A. Yes.

695 Q. Did you have any talk on that subject matter with anybody else than Mr. Engstrom and Mr. Cohn at any time?

A. No.

Q. Did you ever talk to Mr. Stein about it?

A. No.

Q. Did you ever talk to Mr. Meyer about it?

A. No.

Mr. Platt: It is only fair to call your attention to the fact that, Mr. Sidney Stein had died before the date mentioned by the witness.

Mr. Moses: I didn't know that. I accept the suggestion.

The Witness: Mr. Stein had died.

Mr. Moses:

Q. And when I said Mr. Mayer I meant Mr. Elias Mayer.

A. No.

Q. And no other person of their office force?

A. Except, I believe Mr. Cohn's—Mr. Cohn spoke to another man of the office.

Q. Mr. Blumenthal?

A. Yes. Mr. Blumenthal. I think that his firm looked it up.

Q. Did you have any talk with Mr. Blumenthal on the subject?

A. I recall now that the talk I had—the only talk that I had with Mr. Cohn was in the presence of Mr. Blumenthal, a few days after I happened to be over in their office.

Q. Now, as a matter of fact, did you discuss with either of those gentlemen anything further with respect to a proposed adjustment of the claim represented by Mr. Wormser?

A. No.

Q. You made an adjustment of that claim, didn't you?

A. I made the adjustment myself.

Q. Without the knowledge of either Mr. Blumenthal or Mr. Cohn, is that it?

A. Without the knowledge of either one of them.

Q. And this talk with Mr. Wormser was had in your office, wasn't it?

A. Yes, sir.

Q. Was Mr. Hecht and Mr. Finn there?

A. No, no one.

Q. Were they present in the office anywhere upon that occasion?

A. No.

Q. Do you recall any request made by Mr. Robertson
696 upon the occasion of the meeting on June 30, with respect to the check of Mr. Zuncker?

A. No.

Q. Was the only request made, with respect to the withholding of the checks from deposit, the request made by Mr. Hecht upon that occasion?

A. Of the special partners, yes.

Q. Do you know why it was that the check of Mr. Zuncker was not deposited until the 3rd day of July?

A. No, I do not.

Q. You gave no instructions to Mr. Engstrom on that subject?

A. No.

Mr. Moses: That is all, if your Honor please.

Cross-examination by Mr. Platt:

Q. Mr. Marcuse, I show you this telegram, marked Petitioners' Exhibit 15, dated May 8, 1917, and addressed to you and signed by George W. Ely, Secretary. Did you receive that telegram on or about the 8th day of May, 1917?

A. Yes.

Q. Of what organization was Mr. George W. Ely the secretary?

A. Of the New York Stock Exchange.

Q. Now, Mr. Marcuse I understand that shortly after you received this telegram, you communicated in substance the contents of this telegram to each of the gentlemen who had theretofore signed the agreement of April 2, 1917, and to each of the persons who had acted as attorneys for any of those gentlemen in connection with the negotiations, am I correct?

A. Yes, sir.

Q. Now, getting your attention to these contracts of April 2nd and to the contracts — were executed on the 30th day of June, 1917, I will ask you whether in any of the conferences that you had with any of these gentlemen who had signed the agreement of April 2nd as special partners, or with any of the attorneys who had purported to represent any of them, there was ever any reason given for the difference between the contract of April 2nd and the contracts of June 30, other than the receipt of this telegram and its communication to them?

A. That was the only reason.

697 Mr. Platt: That is all.

(Recess.)

Mr. Wormser: If the Court please, I have the consent of counsel in this case to make the following statement: That in 1918, at the time referred to by Mr. Marcuse, the witness, with respect to an interview between him and me, I did not, nor did the firm of which I am a member, represent either Mr. Marcuse or Marcuse & Company or any special or general partner, but represented only certain creditors of Von Frantzius & Company, who held Von Frantzius-Marcuse trust certificates, and that neither I nor any member of our firm became counsel for Mr. Marcuse or represented him at any time until March 13, 1920, two days after the appointment of the receiver in this case.

Cross examination by Mr. Miller:

Q. Mr. Marcuse, I call your attention to Zuncker's Exhibits 1 to 8, both inclusive, I will just show you one of them for convenience, to show you that those are the contracts that were signed in Colonel Foreman's office on the 2nd of April, 1917. Having these contracts in mind, is it true that upon the execution of these documents they were left in escrow with Colonel Foreman or his firm?

A. Yes.

Q. Did Colonel Foreman say to you gentlemen assembled there that day that he was not willing to have these contracts delivered at that time?

A. Yes.

Q. Did any one of the gentlemen present on that occasion make any objection to these contracts being left in escrow with Colonel Foreman?

Mr. Jacobson: I object. It assumes an escrow, your Honor, and it is not proper cross-examination.

The Court: Go ahead.

Mr. Jacobson: Mr. Miller used the word "escrow." The witness said nothing about escrow. I object to his assuming something which is not in evidence.

Mr. Miller: Counsel lost the question and answer immediately preceding that.

Mr. Jacobson: No, I didn't.

A. No.

Mr. Miller:

698 Q. I show you Zuncker'- Exhibit 15 and will ask you if the portion of the signature which is still on the bottom is in your handwriting?

A. Yes.

Q. Did you sign this document for the purpose of evidencing the conditions under which Colonel Foreman was to retain these eight contracts in his possession?

A. Yes.

Q. Mr. Marcuse, when did you finally procure from the administrators of the Von Frantzius estate the securities that you referred to a little while ago in your answer, when you spoke of the arrangement that you worked out with the Von Frantzius creditors to get their claims assigned to you and then to procure those securities?

A. When did I take possession of them?

Q. Yes, when did you get them? When were they turned over to you?

A. The 1st of August, 1917.

Q. Is it true that the procuring of those securities is the matter, or one of the matters referred to in paragraph lettered B in Zuncker'-Exhibit 15, which is the letter you signed to evidence the conditions under which Colonel Foreman was to retain in his possession those contracts?

A. Yes.

Q. Did any of the gentlemen named in these contracts, Zuncker'-Exhibits 1 to 8, both inclusive, as special partners, pay over any money to you as a member of Marcuse & Company or to Marcuse & Company or otherwise, so far as you know, before the 30th day of June, 1917?

A. No.

Q. How soon after the signing of these contracts in Colonel Foreman's office on April 2, 1917, did you go to New York to make whatever arrangement you had to make with the New York Stock Exchange?

A. About three weeks—two or three weeks.

Q. How long were you in New York?

A. Perhaps three or four days at the most.

Q. Well, as the result of your trip to New York, did you know when you came back from New York that the contemplated partnership evidenced by the contracts which had been in the possession of Colonel Foreman, could not go into effect?

A. That partnership could not go into effect, no.

Q. You knew that when you came back from New York?

A. Yes.

699 Q. And you knew that that plan would have to be abandoned, did you?

A. Yes.

Q. Did you tell that to Vette, Henry Vette?

A. Yes.

Q. Did you tell that to Peter M. Zuncker?

A. Yes.

Q. Did you tell that to Theodore Regensteiner?

A. Yes.

Mr. Moses: I object, if the Court please, to the form of that question. He has testified to what he said to these people, and counsel has injected into the question the word "abandoned." Now, he did not tell them that the plan was abandoned, in just that way, but that the plan was modified. It seems to me that that is an attempt

to characterize what he said to Zuncker and Vette as an abandonment of the plan, when as a matter of fact the issue is whether they modified the plan to conform to that rule.

The Court: Overruled.

Mr. Miller:

Q. Did you tell that to Scott Brown?

A. Yes.

Q. Did you tell that to Richard Yates Hoffman?

Mr. Burry: Tell what? We object to the question.

The Court: Sir?

Mr. Burry: We object to it, "did he tell that to Scott Brown."

Mr. Miller: Counsel has evidently lost my first question to Henry Vette, and what he said just before that.

Mr. Burry: Oh, you mean told Scott Brown the same thing he told Vette?

Mr. Miller: Yes, the same thing he told these other fellows.

Mr. Burry: I heard what he said he told Vette.

A. Yes.

Mr. Miller:

Q. How soon did you give that information to those gentlemen after you got back from New York?

A. Almost—perhaps after twenty-four hours.

Q. Did you give that same information to Frank A. Hecht and Joseph M. Finn?

A. Yes.

Q. Also to Sydney Stein?

A. Yes.

700 Q. Mr. Marcuse, did Sydney Stein represent you as your attorney from the beginning of your endeavor to organize your firm as Marcuse & Company?

A. Yes.

Q. Up until the completion of that endeavor in the organization of the firm?

A. He did.

Q. Do you know whether or not he also represented Lew H. Morris?

A. Yes.

Q. Well—

A. He represented Lew H. Morris in connection with forming the new firm, that is all.

Q. Can you tell us whether Mr. Frank A. Hecht had an attorney in connection with the matter, and if he did have, can you tell us who he was?

A. Mr. Frank A. Hecht consulted Mr. Carl Mayer once to my knowledge.

Q. Mr. Marcuse, after you had notified the various gentlemen whom I have named that the contemplated partnership evidenced

by the contract signed in Foreman's office on April 2nd, 1917, would have to be abandoned, did you then proceed to work out or endeavor to work out some other kind of a plan which would permit you to organize the firm of Marcuse & Company?

Mr. Jacobson: I object to the form of the question as putting in facts not in evidence.

The Court: The question is whether he did or not. It is cross examination of the witness. Objection overruled. He may answer the question.

A. I had worked out this plan on my way back from New York, and discussed that plan immediately upon my return with Mr. Sydney Stein, so that when I notified these men I also told them what I would like to have them do.

Mr. Miller:

Q. That is, you had the plan then evolving in your head?

A. Yes.

Q. Are you the one who worked out this trust plan that was later adopted?

A. No, the idea of reorganizing the firm entered my mind, and I discussed it with Mr. Sydney Stein.

Q. After you got back?

A. After I got back.

Q. But you do not mean to say that the trust plan that was eventually evolved—

701 A. No.

Q. —and worked out, came from your mind?

A. No.

Q. You were the one, were you not, that solicited and procured the consent of Mr. Frank A. Hecht and Mr. Joseph M. Finn to act as special partners with yourself and Lew Morris as the general partners of a new plan which you finally worked out?

A. Yes.

Q. On your direct examination you spoke of a meeting which took place in Colonel Foreman's office after your return from New York, at which there was present, Hecht, Finn, Vette, Zuncker, Regenstein and Hoffman, as I recall your evidence. Do you have that meeting in mind?

A. Yes.

Q. Give me as closely as you can the date when that meeting took place.

A. Some time in May, 1917.

Q. Maybe I can aid your recollection. I show you Petitioners' Exhibit 15, which is the telegram from the secretary of the New York Stock Exchange and will ask you whether that meeting took place before or after you got this telegram?

A. After I got this telegram.

Q. Now, can you tell us about how soon after you got this telegram the meeting took place?

A. I couldn't say.

Q. Well, give me your best recollection or judgment.

A. I would judge within a week afterwards.

Q. I understood you to testify on your direct examination that the thing which is now Petitioners'—the document which is now Petitioner's Exhibit 6, was then in process of formation. This is the so-called Hecht-Finn trust agreement. Is that true?

A. Yes.

Q. How far along in the process of its construction had it gotten?

A. I do not know.

Q. How soon after that meeting took place in Colonel Foreman's office, and I now speak again of the meeting in May that you referred to a minute ago?

A. Yes.

Q. How soon after that meeting took place was Petitioner's Exhibit 6 completed and ready for signature?

702 A. Oh, quite a while.

Q. How long?

A. Oh, I think it was weeks.

Q. Weeks?

A. Yes.

Q. Is it your idea that this document was finally completed was the handiwork of Sydney Stein and Colonel Foreman's office?

A. Yes, also Colonel Applegate was consulted.

Q. Who was Colonel Applegate?

A. Colonel Buckingham, excuse me. I have a friend whose name is Colonel Applegate.

Q. Now, Mr. Marcuse, do you remember a conference that took place in the office of Colonel Buckingham between the Colonel, Mr. Scott, Mr. Sydney Stein and yourself, and no one else?

A. I remember the occasion, but I don't remember distinctly the conversation, except—

Q. Well, I am not asking for the conversation, at least not now.

A. Yes.

Q. Did that conference take place in the early part of June, 1917?

A. Yes.

Q. Was a request or suggestion made at that conference by either Sydney Stein or yourself, that Richard Yates Hoffman become one of the two special partners?

A. I don't think so.

Q. Do you know whether or not, following the conference, Sydney Stein prepared the draft of a trust agreement and submitted it to Colonel Buckingham's office?

A. I think he did.

Q. Do you know that Colonel Buckingham disapproved of it, did you know that?

A. No, I did not.

Q. Did you know that the draft of the Hecht-Finn trust agreement which finally became the completed document, was prepared in Colonel Buckingham's office?

A. I do not. I know that there were many changes made.

Q. You did not know it was prepared in his office first, originally?

A. No, I did not. I knew we was in various conferences with Mr. Sydney Stein.

703 Q. Mr. Marcuse, is it not true, if you know, that this so-called Hecht-Finn trust agreement was not finally completed until a day or two before the 30th of June, 1917?

A. That is possible.

Q. Did you have any other conferences at which Hecht, Finn, Vette, Zuncker, Regensteiner and Hoffman, either with or without Scott Brown, were present, at any time between the meeting that you have spoken of in May, 1917, and the final execution of your partnership contract, between yourself, Morris, Hecht and Finn, in the execution of the Hecht-Finn trust agreement? Wasn't that the only one that took place during that period of time?

A. It seems to me there were two, but my memory is not quite clear on that.

Q. The only one that you are now able to say took place is the one in May?

A. The one in May. There was one prior, in April.

A. Yes.

Q. I am talking now about the period of time between your return from New York and the 30th of June.

A. Yes. That is all I can remember.

Q. Is that one?

A. Yes.

Q. Now, this conversation in Boston between you and Clement Studebaker, Jr., occurred, did it not, prior to the 2nd day of April, 1917?

A. Yes.

Q. Going back to those contracts of the 2nd day of April, 1917, signed in Colonel Foreman's office, you told us that those contracts were prepared by Colonel Foreman. I want to call your attention, to see if it refreshes your recollection any, to the fact that they are all bound in the wrappers of Stein, Mayer & Stein. Does that help clear your recollection any as to whether Foreman prepared them, or Sydney Stein prepared them?

A. They were prepared to my recollection, by Sydney Stein, Colonel Foreman and Mr. Robertson.

Q. Do you mean by that that Sydney Stein constructed the documents and submitted them for approval, or revision or suggestions to Colonel Foreman and Mr. Robertson?

A. Yes.

704 Q. I show you a check dated June 30, 1917, Petitioner's Exhibit 10, to the order of Richard Yates Hoffman, for \$50,000. Is that the check you had in mind when on your direct examination you stated that you got \$50,000 from Scott Brown?

A. Yes.

Q. Now, I call your attention, Mr. Marcuse, to the fact that that is the check of the Studebaker Brothers trust?

A. Yes.

Q. That is the only check that you ever got for \$50,000—the only check that you know anything about for \$50,000 from any

source on account of the Hoffman interest in the Hecht-Finn trust, isn't it?

A. Yes.

Q. So that, is it true that when you spoke of getting \$50,000 from Scott Brown, what you really had in mind was the \$50,000 paid by Studebaker Brothers Trust?

A. Yes.

Mr. Burry: We object to that question, if the Court please.

The Court: It is the \$50,000 which was paid by the making of that check?

Mr. Burry: Yes, but the question he has propounded is——

The Court: What he means is, it is the \$50,000 that was paid by that check.

Mr. Miller: Yes, that is what I mean.

Mr. Burry: But that was not the question.

The Court: I will strike out the answer, and sustain the objection to the question. What the counsel wants to do is, not to commit this witness to the legal proposition that the investment was for the Studebaker Brothers Trust, because I think he has not got it in mind that Mr. Marcuse is qualified to answer that question. Have I stated what you want the answer to show?

Mr. Miller: Yes.

The Court: That that check is the \$50,000 Scott Brown paid?

Mr. Miller: Yes, and that this check is the payment he had in mind when he spoke of getting the \$50,000 from Scott Brown.

Mr. Burry: Yes.

Mr. Miller:

Q. This is the check, isn't it, that you had in mind?

A. Yes.

Q. You were not present when these contracts in evidence as Zuncker's Exhibits 1 to 8 both inclusive, were destroyed?

705 A. No.

Mr. Jacobson: You don't mean that the contracts were destroyed, Mr. Miller. You mean part of the signatures were torn off, don't you?

Mr. Miller: Yes, that is what I mean, to be technical and accurate. I assume when you rip a signature off a contract it destroys your contract.

Q. And you were not present when the letters which are in evidence, signed by the various parties, similar to the one I showed you, Zuncker Exhibit 15, evidencing the conditions under which Foreman held the contract,—under which those were turned over?

A. No, sir.

Q. Did Sydney Stein notify you at any time that those contracts had been destroyed?

A. No.

Q. Did anybody?

A. No.

Mr. Miller:

Q. Did Sydney Stein continue to represent you and your firm, Marcuse & Company, after June 30, 1917, until his death?

A. Yes.

Q. He was your attorney? He was the attorney for yourself and your firm up to the date of his death, wasn't he?

A. Yes, sir.

Mr. Miller: That is all, sir.

Mr. Platt: Just one or two questions, I would like to ask Mr. Marcuse.

Examination by Mr. Platt:

Q. Mr. Marcuse, you say that Mr. Frank A. Hecht consulted Carl Meyer once. As a matter of fact, you and Mr. Frank Hecht came up to Carl Meyer's office, did you not, together?

A. Yes, sir.

Q. With a contract which had been drawn relating to a special partnership?

A. Yes, sir.

Q. That was sometime before the 2nd of April, 1917, wasn't it?

A. Yes.

Q. And you heard the conversation between Mr. Meyer and Mr. Hecht, did you not?

706 A. Yes, sir.

Q. Mr. Meyer attempted to persuade Mr. Hecht from going into any such arrangement, did he not?

A. Yes, sir.

Q. And said some things that somewhat hurt your feelings at the time?

A. No. He says, "what do you want to go into the brokerage business for?"

Q. And that is the only time, as far as you know, that Mr. Hecht ever consulted Mr. Meyer?

A. Yes.

Q. This Petitioners' Exhibit No. 12 is a check drawn by you for \$60,000 to the order of Marcuse & Company?

A. Yes.

Q. At that meeting on June 30th, when the various checks were put in, Mr. Finn's check and Mr. Hecht's check and the other checks, was that check put on the desk?

A. Yes, sir.

Q. And all those checks were turned over to your cashier that morning?

A. All of them were turned over.

Mr. Platt: That is all.

The Court: I will take up this matter tomorrow morning, gentlemen, at half after ten.

(Whereupon an adjournment was taken to Wednesday, May 12, 1920, at the hour of 10:30 o'clock A. M.)

707 In the Matter of MARCUSE & COMPANY, Bankrupts.

Landis, J.

Wednesday, May 12, 1920—10.30 o'clock a. m.

Court met pursuant to adjournment.

Present: Same as before.

Mr. Jacobson: I desire to recall Mr. Marcuse for two or three questions that I omitted on a line of inquiry yesterday.

The Court: Go ahead.

BENJAMIN MARCUSE, recalled as a witness, having been previously sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. You are Mr. Ben B. Marcuse who testified here yesterday?

A. Yes.

Q. Now, how many audits were made in the firm of Marcuse & Company between June 30, 1917, and March 11, 1920, if you know?

A. Three.

Q. When was the first audit made?

A. I believe January 1, 1918.

Q. Now, were there statements prepared or a summary of audit prepared at that time?

A. Yes.

Q. Whom did you hand it to, if anyone?

A. It was sent out—a copy was sent out to—shall I mention to who?

Q. Yes.

A. To Mr. Scott Brown.

Q. Scott Brown. Keep your voice up, please. Who else?

A. Frank Hecht, Joe Finn, Vette and Zuncker.

Q. The last names you mentioned were Vette and Zuncker.

Whom else?

708 A. Mr. Regensteiner.

Q. Now, about when were these audits, or copies of them, sent to these gentlemen with reference to January 1, 1918, when the audit was made?

A. Immediately afterward.

Q. Now, did you discuss the audit with any of those gentlemen at any time after it was made?

A. Yes, perhaps I did.

Q. Now, have you any recollection of having discussed it with Mr. Scott Brown? Yes or no.

A. Yes, I think I have.

Q. Will you please tell what you remember that discussion was at that time?

A. The discussion was that Mr. Brown thought the audit was not sufficiently complete to show all the assets and liabilities.

Q. Where was this talk, Mr. Marcuse?

A. I don't remember.

Q. Was it in your office or outside?

A. It may have been or may not, I don't remember. Either at his office or my office.

Q. Had you been going to his office from time to time?

A. Once in awhile.

Q. And, Mr. Marcuse, what did you say when Mr. Brown told you he thought the audit was incomplete?

A. I listened to him.

Q. Yes, sir.

A. I don't remember saying anything special.

Q. Well, was there any change made in the audit as a result of that talk?

A. Yes.

The Court:

Q. Why didn't he like this audit?

A. The audit was not complete, not showing the—not verifying the various items, and not showing the standing of the firm, the assets and liabilities.

Q. Who said that?

A. Mr. Brown.

Q. He said that to you, did he?

A. Yes.

Q. Brought it in with him?

A. Why, in the course of conversation.

Q. I say, did he have the audit with him?

A. No, I think not.

Q. Where did he tell you this?

709 A. Either in his office or in my office.

Mr. Jacobson:

Q. Well, at the time of this conversation did one of you have the audit before you?

A. No, I think not.

Q. Now, what change, if any, was made, as you started in to say before, after this talk?

A. The change was made in 1919, this last audit.

Q. Yes, sir.

Q. Which audit was never delivered on account of the receiver taking possession of it before the audit was ready.

Q. No. I mean after this talk with reference to the first audit, January, 1918, six months after you had been in business, was

there any change made in that audit, or was there anything further done about it after your talk with Mr. Brown?

A. No, not materially.

Q. Now, was there any change that you now recall that was made at that time?

A. Not as I recall.

Q. Now, have you told us all you remember of that conversation had with Mr. Brown at that time?

A. Yes, I think so.

Q. Now, to refresh your recollection, did you at that time invite Mr. Brown to make a further inspection or to make a separate audit of his own?

A. No, I did not.

Q. Well, what did you say to him about it, if anything?

A. Why, it was passed off.

Q. Do you remember what was said?

A. No.

Q. Now, was Mr. Brown in the office of Marcuse & Company frequently after that?

A. Yes, once in awhile.

Q. How frequently?

A. Oh, various times, from—perhaps once every week, once every two weeks.

Q. Did he do any trading there?

A. When he came in, no.

Q. Well, did he do any trading in the office of Marcuse & Company?

A. Yes, yes, there was an account there.

Q. He had an account. In whose name was the account carried?

710 A. In Clement and George M. Studebaker, and afterwards in Studebaker Brothers, Limited.

Q. When was the change in the account of Marcuse & Company made from Clement and George Studebaker to Studebaker Brothers Limited?

A. I think shortly before the first of this year; around the first of January, 1920.

Q. Yes. Now, these trades that were carried on in the name of George and Clement Studebaker, those were trades made by whom? Who gave the orders to buy or to sell in that account?

A. Mr. Brown.

Q. I see. Now, did you discuss that audit of January 1, 1918, with anybody else, other than Mr. Brown or Mr. Hecht or Mr. Finn?

A. I think not.

Q. Now, to refresh your recollection, did you ever talk about it with Mr. Zuncker?

A. No, I think not.

Q. Or Mr. Vette?

A. No.

Q. Or Mr. Regensteiner?

A. No.

Q. When was the next audit made of the Marcuse & Company affairs?

A. 1919.

Q. Do you remember what time of that year?

A. January 1st.

Q. And what became of that audit?

A. I think copies were sent out.

Q. From your office?

A. From our office.

Q. To whom?

Mr. Miller: Now, if the Court please, unless this gentleman knows—he says he thinks.

The Court: Yes.

Mr. Miller: Now, I move to strike that out.

The Court: Strike out the answer.

Mr. Jacobson:

Q. Do you know whether or not copies were sent out?

Mr. Miller: Of your own knowledge, Mr. Marcuse; not what somebody told you.

A. I instructed copies to be sent out.

The Court:

Q. Who did you instruct?

711 A. Mr. Engstrom.

Mr. Jacobson:

Q. And you instructed Mr. Engstrom to send copies to whom?

Mr. Mills: Is that material your Honor?

Mr. Jacobson: I will connect it up, your Honor.

The Court:

Q. Who did you tell him to send them to, Mr. Marcuse?

A. To the same parties that had received them before.

Mr. Jacobson:

Q. Mention their names.

A. To Frank Hecht, Joe Finn, Scott Brown, Regensteiner, Vette, Zuncker.

Q. Anybody else?

A. That is all.

Mr. Jacobson: Now, I will ask counsel for any of those respondents to produce, if they have them, any of those audits, either the

audit of January 1, 1918, or the audit of January 1, 1919, or thereabouts.

Mr. Miller: I will produce the only one we have.

Mr. Jacobson: Speaking for whom now, Mr. Miller?

Mr. Miller: Vette and Buncker. When I say Vette or Zuncker, I do not know whether it came from the hands of Mr. Zuncker or Mr. Vette. One of the other of them brought it to me. (Producing document.)

Mr. Jacobson:

Q. I show you what purports to be an audit made by C. A. McDonald & Company of Marcuse & Company, September 30, 1917. (Handing document to witness.) State if that is the audit that was sent out on or about January 1, 1918?

A. Yes, sir.

Mr. Jacobson: I offer in evidence as Petitioners' Exhibit 29 the document identified by the witness.

(Whereupon said document was received in evidence marked Petitioners' Exhibit 29-A, and was and is in words and figures as follows, to-wit:)

Petn. Ex. 29-A.

November 1, 1917.

Marcuse & Company, Chicago, Ill.

712 DEAR SIRS: We submit herewith report, as per details on next page, based on examination of your books for three months ending September 30, 1917. Respectfully, (Sgd.) C. A. McDonald Co., per H. J. L., Certified Public Accountants, Marcuse & Company. September 30, 1917.

Index.

	Page.
Exhibit "A." Balance Sheet	1
"B." Profit & Loss Statement.....	2
"C." Commodity Trades Open	3
"D." Comments	4
Schedule 1. Cash in Office.....	5
2. Cash in Banks	5
3. Accounts Receivable—Customers and Correspondents.....	6
4. Accounts Receivable—Sundries	6
5. Notes Receivable	6
6. Memberships.....	7
7. Accounts Payable—Correspondents	7
8. " " —Sundries.....	8
9. Notes Payable	8

714

Exhibit "B."

Marcuse & Company.

Profit & Loss for Three (3) Months Ending September 30, 1917.

Earnings:

Commissions	11,008.28
Interest	4,651.64
Investments, etc.	3,251.08
Error a/c	54.87

Gross Profit 18,965.87

Expenses:

Salaries	11,115.94
Rent, etc.	4,186.73
Legal	1,800.00
Stationery, Advertising, etc.....	1,685.14
Telephone, Tickers, etc.....	1,093.77

Miscellaneous:

Insurance Premium, Ben Marcuse.....	1,056.00
Window Lettering and Sign	482.61
Traveling Expense	350.10
Cigars, Suppers, etc.....	103.25
Furniture—Repairs, etc....	192.75
Sundries	244.24

2,428.95

22,310.53

Loss for Period..... \$3,344.66

Exhibit "C."

Marcuse & Company.

September 30, 1917.

Commodity Trades Open.

With Chas. Sincere & Co.

For a/c of:

Bought.

Sold.

Max Glass.....	9/22, 10, May Corn @ 1.14%	9/22, 10, Dec. Corn @ 1.17%
M. J. Kurtz.....		9/12, 5, Dec. Corn @ .93
W. J. White.....		9/17, 5, May Corn @ 1.12½
		9/22, 5, " " @ 1.14%
		9/28, 5, Dec. C. @ 1.17½

For a/c of:

With A. J. White & Co.

H. Molner..... 9/18, 25, Dec. Corn @ 1.17
9/18, 25, " " @ 1.15½

715

Exhibit "D."

Marcuse & Company.

September 30, 1917.

Comments.

Memberships.—The value of memberships as shown on our Balance Sheet represents the book-value, no provision was made for depreciation.

Furniture & Fixtures.—The above applies also to the Furniture and Fixtures.

Reserve for Doubtful Accounts.—A proper Reserve Account should be built by a provision for possible future losses. An account may run for years providing income, and in one particular year result in a bad debt.

Securities Balance.—We have reconciled the Securities as shown long and short in Customers' Accounts with statements rendered by correspondents, scrutinized the securities on hand, and secured confirmations from the various banks of collaterals in their possession.

Cash.—The cash in office was verified by actual count, and the amounts on deposit with banks were confirmed by them.

Method of Bookkeeping.—We suggest that the Partners' accounts and the profit & Loss account be transferred from the General Ledger into a private Ledger, and the balances of Earning & Expense accounts closed into Private Ledger when books are closed.

SCHEDULE 1.

Marcuse & Company.

September 30, 1917.

Cash in Office at Close of Business 9/29/17.

Regular	\$808.17
Petty	15.10
	<hr/>
	\$823.27

716

SCHEDULE 2.

Reconciliation of Bank Balances.

The Fort Dearborn National Bank:

Balance, as per Bank Certificate.....	\$18,800.00	
Ledger Balance		18,800.00

State Bank of Chicago:

Balance, as per Bank Certificate.....	70,279.94	
Outstanding checks, #191.....	28.80	
192.....	19.50	
193.....	28.84	
200.....	2.00	
203.....	664.59	
	<hr/>	
	743.33	

Less Income Tax charges for	
P. M. Zuncker.....	3.75
Exchange	1.16

4.91

738.42

Ledger balance	69,541.52
----------------------	-----------

Central Trust Co. of Illinois:

Balance as per Bank Certificate.....	22,879.40
Ledger balance	22,879.40

Merchants Loan & Trust Co.:

Balance, as per Bank Certificate.....	28,691.70
Outstanding checks, #1025.....	11.47
1026.....	516.92
	<hr/>
	528.39

Ledger balance	28,163.31
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Corn Exchange National Bank:

Balance, as per Bank Certificate.....	18,379.67
Outstanding checks #114.....	59.84
117.....	281.25
	<hr/>
	341.09

Ledger balance	18,038.58
----------------------	-----------

157,422.81

SCHEDULE 3.

Marcuse & Company.

September 30, 1917.

Accounts Receivable—Customers and Correspondents.

Customers Ledger Balances 3,989,743.14

Correspondents:

Chas. Sincere & Co.—Grain a/c.....	5,654.71	
A. J. White & Co. “	2,697.00	
	<hr/>	8,351.71
		<hr/>
		\$3,998,094.85

SCHEDULE 4.

Accounts Receivable—Sundries.

L. H. Morris—Drawing a/c.....	1,200.00
Dividend a/c	331.25

SCHEDULE 5.

Notes Receivable.

Date.	Maker.	Amount.	Terms.
Sept. 21, 1917.	Geo. Sayer	15,000.00	60 days.
“ 21, 1917.	Harris Greenberg	250.00	60 “
		<hr/>	
		\$15,250.00	

SCHEDULE 6.

Marcuse & Company.

September 30, 1917.

Memberships (Book Value).

1 New York Stock Exchange	\$68,000.00
1 Chicago Stock Exchange	2,000.00
1 Chicago Board of Trade	4,800.00
	<hr/>
	\$74,800.00
	<hr/>
	\$1,531.25

718

SCHEDULE 7.

Accounts Payable—Correspondents.

Hornblower & Weeks	1,387,953.82
Pyncheon & Co.	1,697,581.87
Local Brokers (Stocks to Receive).....	6,817.10
Stock Subscription (orders not executed by correspondents)	362.50
	<hr/>
	\$3,092,715.29

SCHEDULE 8.

Marcuse & Company.

September 30, 1917.

Accounts Payable—Sundries Unpaid Bills.

Addressograph Co.	6.53
Am. Multigraph Co.	1.70
Arris & Co.	41.00
Baldwin Printing & Staty. Co.	6.25
Bachelor, C. H.	1.00
Buckley & Buckley .....	.80
Chicago Telephone Co.	126.38
Chicago Daily Journal	15.00
Chicago News Bureau	30.00
Chicago Towel Co.	10.00
Financial Press	21.11
Freund, Wm. & Sons	11.40
Illinois Tel. News	30.00
Inv. Pub. Service	10.00
Koelling B. & Co.....	6.50
Leopold & Mergenthaler	4.25
Postal Tel. Cable Co.	1.32
Roneo Co.	8.25
Stevens Maloney & Co.	6.85
Western Union Tel. Co.	121.07
	<hr/>
	\$459.41

719

SCHEDULE 9.

Notes Payable.

Date.	Payee.	Amount.	Terms.
Aug. 2, 1917.	Cont. & Com'l Nat'l Bank.....	150,000.00	5½%, Demand.
" 17, "	Corn Exchange Nat'l Bank.....	150,000.00	5¼%, 60 days.
" 18, "	Ft. Dearborn Nat'l Bank.....	125,000.00	5½%, Demand.
Sep. 11, "	Central Trust Co. of Ill.....	100,000.00	5½%, 6 mos.
" 12, "	Merchants Loan & Trust Co....	100,000.00	5½%, 6 mos.
" 12, "	State Bank of Chicago.....	125,000.00	5½%, 6 mos.
" 12, "	" " "	105,000.00	5½%, Demand.
		<hr/>	
		\$855,000.00	

Mr. Jacobson: Now, Mr. Miller, I ask you to produce the audit the witness testified was sent to Scott Brown at the same time.

Mr. Buckingham: We can't produce it out of a clear sky.

Mr. Miller: I know nothing about it. We haven't got it. If we can find it, we will produce it for him.

Mr. Jacobson:

Q. Now, was there another or a third audit made?

A. Yes.

Q. And when was that made?

A. In 1920.

Q. And you say that was never delivered?

A. It was never delivered to anyone except——

Q. To those gentlemen?

A. No.

Q. Now, did you send any copy of an audit to Mr. Richard Yates Hoffman?

A. I don't know.

Q. You stated before that a change was made in the audit of 1920. Now what was that change, that is, what were the substantial differences between the first two audits and the last one?

A. The accounts were all verified.

Q. By whom?

A. By the auditor.

Q. Now, did Scott Brown ever ask to see the books of Marcuse & Company?

A. No.

Q. Did he ever ask to inspect the records or count the cash or security?

A. No.

Q. Did you ever offer that privilege to him? If you recall?

A. No.

Q. Nothing was said about it?

720 A. No.

Mr. Jacobson: That is all.

Cross-examination by Mr. Miller:

Q. Mr. Marcuse, I want to ask you one question. Do you remember a conference that took place in Colonel Foreman's office about the 20th of June, 1917, between Colonel Foreman, Mr. Robertson, Sydney Stein and yourself?

A. I remember that I was there, although I don't know just what happened during that conference.

The Court: Nineteen and when?

Mr. Miller: And seventeen.

Q. Do you remember of Sydney Stein saying to Colonel Foreman and Mr. Robertson in that talk that Colonel Buckingham had

refused to permit his people to become partners in Marcuse & Company or to have anything to do with the organization of this firm except upon the basis of becoming beneficiaries under a Massachusetts trust?

A. I do not remember that.

Q. You don't remember that?

A. No.

Mr. Miller: That is all.

Mr. Moses: May I also ask a question or two, if your Honor please? A few tag ends we are trying to clean up.

Examination by Mr. Moses:

Q. Do you recollect being served with process in suits brought against Marcuse & Company before the 11th day of March, 1920?

A. Yes.

Q. How many such suits, do you know?

A. I remember of two of them.

Q. And what did you do with your process that was served upon you?

A. I turned it over to Mr. Wormser.

Q. Mr. Wormser. Well, were you served with any process that you turned over to Stein, Mayer & Stein, or Stein, Mayer and David?

A. In 1920?

Q. Since the partnership was formed and before its failure.

721 A. If I understood your question right, you asked me, papers served in March, 1920.

Q. No.

A. Will you repeat that question?

Q. Was Marcuse & Company sued after the 2nd day of July, 1917, and before the 11th of March, 1920?

A. Oh! I must have misunderstood your question. May I have my answer stricken out?

Q. Yes.

A. Yes, there were various suits started.

Q. And were you served with process in those suits?

A. Yes.

Q. What did you do with the process that was served upon you in those suits?

A. I turned them over to Stein, Mayer & Stein.

Q. Did either Mr. Finn or Mr. Hecht ever talk to you about that process that was served upon them in those suits?

A. I don't remember that they had.

Q. So that at any rate you have no recollection of Mr. Finn or Mr. Hecht turning over to you any summonses that had been served upon them in those suits?

A. No.

Q. Did you ever discuss with Mr. Hecht or Mr. Finn the matters involved in those suits?

A. I may have spoken to them about it, but I can't remember just now.

Q. Do you remember what those suits were?

(No answer.)

Q. Do you remember the suit of Abraham Goldman against Ben Marcuse, Lew H. Morris, Frank A. Hecht, Senior, and Joseph Finn, doing business as Marcuse & Company?

A. Yes, that was a suit, if I remember, for a nominal amount—seven or eight hundred dollars.

Q. The plaintiff's attorneys were Sonnenschein, Berkson, Lautmann & Levinson.

A. Yes, I remember that.

Q. Did you discuss that suit with either Mr. Hecht or Mr. Finn?

A. I think perhaps I did over the telephone.

Q. Did you discuss the suit with any member—

The Court: I will have to ask you to be a little more specific, either strike out the "I think" or the "perhaps". I will compromise if you get rid of one of them.

Mr. Miller: Or the whole answer.

722 The Court: No, I don't want to be unreasonable. Get rid of either the "I think" or the "Perhaps".

The Witness: Perhaps I did.

Mr. Moses:

Q. With whom?

A. Perhaps I told Mr. Finn over the telephone, explaining the nature of the suit.

Q. Well, you recollect that you did or didn't? Which?

A. I recollect I did speak to either Mr. Finn or Mr. Hecht about the reason of this suit.

The Court:

Q. Did he call you up and ask you "What is this thing that is being brought against this firm", or did you call him up and tell him about it? Was the conversation the result of a demand by either Hecht or Finn to be informed by you as to just what this suit was about,—what they or the firm or you were getting into?

A. I believe when I was served and I saw their names on it that I called him up and explained it to him before he called me up.

Q. In the suit, then, their names were mentioned?

A. I believe in the suit their names were mentioned. Am I correct?

Mr. Moses: We will have the summons here. Yes, you are correct.

Q. What did you say to him on that subject?

A. I explained that the demand for this man was unreasonable, and that we refused to pay his demand; that we offered to com-

promise, and, as the suit was unreasonable, we would rather go to trial than pay him what he wanted.

Q. And what did Mr. Finn say to you in reply to that?

A. He offered—he said it was always best to avoid lawsuit, or something like that.

Q. Now, did you consult someone in the office of Stein, Mayer and David concerning that suit?

A. Yes.

Q. Who?

A. Mr. Cohn.

Q. And anyone else in that office?

A. I think not.

Q. Was either Mr. Finn or Mr. Hecht present when you talked in that office about that lawsuit?

A. No, I think not.

Q. Do you remember a suit brought by E. S. Meyers, in the Municipal Court, against Ben Marcuse, Lew H. Morris, Frank A. Hecht and Joseph M. Finn, co-partners, doing business as Marcuse & Company?

723 A. E. S. Meyers?

Q. In which the plaintiff's attorneys were Sindén, Hassel & Byrne. E. S. Meyers is the plaintiff's name. Some time in December, 1919.

A. I don't remember that suit.

Q. You don't remember that?

A. No.

Mr. Moses: I want to offer in evidence a check dated January 18, 1919, drawn by Marcuse & Company, by Lew H. Morris, payable to the order of Joseph Finn, for \$1,000 and endorsed by him for deposit.

Mr. Platt: We admit that we received that check. I say Joseph M. Finn admits he received that check.

Mr. Moses: That is petitioner's Exhibit 30.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 30-a, and was and is in words and figures as follows, to-wit):

Pet. Ex. 30-A.

Marcuse and Company,

Stocks & Bonds,

122-124-126 So. La Salle St.

Chicago, Jan. 18, 1919. No. 281.

Pay to the order of Jos. Finn \$1,000.00 One Thousand Dollars.
Marcuse and Company, by Lew H. Morris. To Fort Dearborn National Bank, Chicago, Ill. (Canceling stamp: "Paid 1, 21, 19.")
Countersigned: Emil O. Engstrom. On reverse side: Jos. M. Finn

for deposit per R. W. (Stamp:) Paid through Chicago Clearing House P. M. 22 P. M.

724 Mr. Moses: And check of Marcuse & Company on the Fort Dearborn Bank, dated January 18, 1919, payable to Mr. Theodore Regensteiner for \$740, and endorsed by him for deposit.

Mr. Miller: Yes.

Mr. Moses: That is thirty-one.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 31-a, and was and is in words and figures as follows, to-wit):

Pet. Ex. 31-A.

Marcuse and Company,
Stocks & Bonds,
122-124-126 So. La Salle St.

Chicago, Jan. 18, 1919. No. 278.

Pay to the Order of Theo Regensteiner \$740.00 * * * Seven Hundred Forty Dollars * * * Dollars. To Fort Dearborn National Bank, Chicago, Ill. Marcuse and Company, by Lew H. Morris. Countersigned: Emil O. Engstrom. Cancelling stamp: "Paid 1/22/19." (Endorsement on reverse of check:) Theo Regensteiner. Paid through Chicago Clearing House P. M. 28. P. M. Jan. 22, 1919, to the Harris Trust & Savings Bank of Chicago. Pencil mark: (7.)

Mr. Moses: And check of January 18, 1919, by Marcuse & Company, on the Fort Dearborn National Bank, to I. Grollman for \$400, and endorsed by him.

Mr. Miller: Show that signature to Mr. Grollman, please.

Mr. Louis Grollman: Yes.

Mr. Moses: Petitioners' Exhibit 32.

(Whereupon said document was received in evidence, marked Petitioner's Exhibit 32, and was and is in words and figures as follows, to-wit):

725

Pet. Ex. 32.

Marcuse and Company,
Stocks & Bonds,
122-124-126 So. La Salle St.

Chicago Jan. 18, 1919. No. 279.

Pay to the Order of I. Grollman \$400.00 Four Hundred Dollars. Marcuse and Company, by Lew H. Morris. To Fort Dearborn National Bank, Chicago, Ill. Countersigned: Emil O. Engstrom.

Cancel-ing Stamp: "Paid 1, 22, 19." (On reverse side.) I. Grollman. (Stamp:) Paid through Chicago Clearing House P. I. M. Jan. 22, 1919, G, to the First National Bank.

Mr. Moses: Now, may we have the admission, if your Honor please, by Mr. Miller, on behalf of Messrs. Vette and Zuncker, that on January 18, 1919, the account of Vette was credited on the "L" to "Z" ledger with the sum of \$1,200, and the account of Mr. Zuncker was credited on the "L" to "Z" ledger with the sum of \$1,000?

Mr. Platt: Well, may I in that connection—I suppose Mr. Zuncker has brought in those statements, and that may obviate the necessity of that. I asked him to bring them in.

Mr. Miller: Which statements do you mean?

Mr. Moses: All statements received from Marcuse & Company.

Mr. Jacobson: I asked him for the same thing this morning.

Mr. Miller: I have a batch of them. I can't say it is all of them.

Mr. Platt: If he has a statement for those months that obviates the necessity of that.

Mr. Moses: I think I can get Mr. Miller to admit it.

Mr. Miller: If it is true, you can get me to admit it now. Go ahead.

Mr. Moses: Also that F. A. Hecht was credited on the "A" to "K" ledger with the sum of \$1,000 on January 18, 1919.

Mr. Platt: We admit that for Mr. Hecht.

Mr. Moses: Now, I also have, if your Honor please, the bank statement, which I withdrew yesterday, prepared by Foreman Brothers Banking Company, which I have submitted to Mr. Miller, of P. M. Zuncker, showing that on January 28th the bank balance—June 28, 1917, the bank balance was \$4,161.61; June 29th, the same; June 30th, a deposit of \$5.00 and of \$304.50 was made, so that the balance was increased on July 1st to \$4,471.11, and that on July 2nd a deposit of \$9,908.34 was made, increasing the balance on July 2nd to \$26,744.85, and that on July 2nd a check of \$2,884.60 was drawn and honored by the bank, and on July 3rd a check of \$25,000 was honored by the bank, leaving a net balance at the end of July 3rd of \$1,744.85. I will ask to have that marked the next exhibit number.

(Whereupon said document was received in evidence marked Petitioners' Exhibit 33, and was and is in words and figures as follows, to-wit):

727

Plt. Ex. 33.

Duplicate.

Mr. P. M. Zunker, 216 No. Green St., Chicago, Ill., in Account With Foreman Bros. Banking Co.

June-July, 1917.

Please examine at once. If no error is reported in ten days the account will be considered correct.

P. M. Zunker, 216 No. Green St., Month of June-July, 1917.

Line No.	Day.	Checks.	Day.	Checks.	Day.	Deposits.	Day.	A. M. balance.	P. M. balance.
Balance brought forward Jun. 28.....								4,161.61	
1.	Jul. 2.	2,884.60	.....	.....	.....	.....	1.	Jun. 28.....	4,161.61
2.	Jul. 3.	25,000.00	.....	.....	.....	.....	2.	Jun. 29.....	4,161.61
3.	.....	.....	.....	.....	.....	5.00	3.	Jun. 30.....	4,471.11*
4.	.....	.....	.....	.....	Jun. 30	304.50	4.	Jul. 1.....	4,471.11*
5.	.....	.....	.....	.....	Jul. 2	9,908.34	5.	Jul. 2.....	26,744.85*
6.	.....	.....	.....	.....	Jul. 2	15,250.00	6.	Jul. 3.....	1,744.85*
7-50.	.....	.....	.....	.....	.....	.....	7-31.	.....	.....
Balance.....							Jul. 3	1,744.85	

Please report any difference in this statement to the auditor.

Plt. Ex. 33.

728 Mr. Miller: Now, will you go further and also admit that if any bank official, with authority to speak, was called as a witness he would testify that if that check had been presented on the 30th of June, or at any date before the balance in the account was larger than the check, it would have been paid?

Mr. Moses: I believe he would so testify, and I agree that he would so testify.

The Court: What bank is this?

Mr. Miller: Foreman Brothers.

Mr. Moses: Mr. Miller, will you agree that these various checks mentioned as having been credited to the account of Mr. Vette and Mr. Zuncker were dividend distributions?

Mr. Miller: Well, do the books show they were?

Mr. Moses: Yes.

Mr. Miller: They weren't checks. They were transfers to their accounts, weren't they?

Mr. Moses: Yes.

Mr. Miller: All right.

Mr. Moses: I presume we may have the same stipulation by Mr. Platt,—that they were dividends?

Mr. Platt: No question about that, Mr. Moses.

Mr. Miller: Now, isn't this the fact: That a dividend then due Hecht and Finn—

Mr. Moses: I mean co-partnership dividend, of course.

Mr. Miller: Yes, I know; but that the dividends then due Hecht and Finn were divided up in that manner and transferred to those accounts at that time instead of being paid to the Chicago Title & Trust Company?

Mr. Moses: That is an argument that counsel can make from the facts as represented. We all know their agreement provides as to how dividends were to be paid. I merely want to show it was a direct distribution made by Marcuse & Company.

The Court: To the various beneficiaries under the trust. What do you say?

Mr. Miller: Well, I say, evidently, yees, with the further statement that I am making, that it was a dividend which, instead of being paid directly to the Chicago Title & Trust Company and being distributed through the Chicago Title & Trust Company, that one he distributed in the manner shown by the books, and that is the only one he distributed in that way.

The Court: Your adversary concedes that the payments were made direct to the various beneficiaries.

729 Mr. Moses: And that they were dividend distributions to the various co-partners?

The Court: Yes.

Mr. Miller: No, that payment only.

The Court: That is all I am talking about; that payment.

Mr. Miller: I thought you were speaking generally of payments; of all of them.

The Court: No, there is only one. That is four per cent, isn't it?

Mr. Platt: Yes.

Mr. Moses: Four per cent dividend.

Mr. Burry: Four per cent extra dividend.

The Court: Well, you can make your proof and save time, if there is any possible controversy about it. Go ahead with the witness.

Mr. Moses:

Q. Mr. Marcuse, will you please state what the check was or represented which was drawn on January 18, 1919, for \$740 and delivered to Mr. Regensteiner, and for that purpose please refresh your recollection by examining that ledger sheet from your ledger.

The Court: Somebody has already sworn to that—a witness in this case. Each one of these men got a check direct from Marcuse & Company.

Mr. Moses: It has not yet been made to appear it was a dividend distribution from the co-partnership, if your Honor please.

The Court: Yes; that it was four per cent extra dividends.

The Witness: That is true.

The Court: Now, I haven't heard any case outside of court, and I have that fact in my head. I must have got it here.

The Witness: That is true. It was four per cent on \$18,500. This is four per cent on \$10,000.

Mr. Moses:

Q. This, you say, I. Grollman, check, is four per cent of \$10,000?

A. Of \$10,000.

Q. Mr. J. Finn's check is four per cent on \$25,000?

A. Yes.

Q. And Mr. Hecht's check is four per cent on——

A. Twenty-five.

Q. —\$25,000.

A. \$25,000.

Q. And Mr. Zuncker's check is four per cent of——

730 A. \$25,000.

Q. \$25,000. And Mr. Vette's check is four per cent of——

A. \$30,000.

Q. \$30,000?

A. \$30,000.

Mr. Moses: Now, I desire, if the court please, with the consent of counsel, to offer the publication made of the certificate of co-partnership in the Chicago Daily Law Bulletin.

Mr. Platt: As far as we are concerned, we have no objection.

Mr. Moses: I will simply offer one of these as to the form of publication, and agree that the publication appeared on July 2nd, July 9th, July 16th, July 23rd, July 30th and August 6th,—in those numbers of the Chicago Daily Law Bulletin.

Mr. Platt: All in the year 1917.

Mr. Moses: 1917.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 34, and was and is in words and figures as follows, to wit:)

Pet. Ex. 34.

Chicago Daily Law Bulletin.

Stein, Mayer & Stein, Attorneys.

1633 First National Bank Building.

Monday, August 6, 1917.

This is to certify, that the undersigned, Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, being desirous of forming a limited partnership under the provisions of an Act of the General Assembly of the State of Illinois, entitled, "An Act to Revise the Law in Relation to Limited Partnerships," approved March 18, 1874, in force July 1, 1874, do hereby certify:

(1) That the name or firm under which such limited partnership is to be conducted shall be Marcuse & Co., the words "& Co." in said firm name referring to L. H. Morris only.

(2) That the general nature of the business to be transacted is the brokerage business of buying and selling for others on commission, stocks, bonds, grains, provisions and various commodities, dealt in on the New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade and various other exchanges in which securities and various commodities are dealt in.

731 (3) That the names and places of residence of the general partners are Ben Marcuse, Congress Hotel, Chicago, and L. H. Morris, 440 Diversey Parkway, Chicago; and the names and places of residence of the special partners are Frank A. Hecht, 2952 Lake Shore Drive, Chicago, and Joseph M. Finn, 533 Diversey Parkway, Chicago.

(4) That the amount of capital stock which each special partner has contributed to the common stock is:

Frank A. Hecht	\$95,000
Joseph M. Finn	95,000

(5) That the period at which the said partnership is to commence is July 1, 1917, and the period when it will terminate is June 30, 1922.

(6) In the partnership articles of agreement by and between the said partners, it is stipulated that the death of any or either of them, except the said Ben Marcuse, shall not work or cause a dissolution of said co-partnership, and that in the event of the death of any or either of them, except the said Marcuse, the said co-partnership shall continue until the termination thereof by limitation.

In Testimony Whereof, We have hereunto set our hands and seals this 2nd day of April, A. D. 1917. Ben Marcuse. (Seal.)
Lew H. Morris. (Seal.) Frank A. Hecht. (Seal.) Joseph M. Finn. (Seal.)

STATE OF ILLINOIS,
Cook County, ss:

I, Henry T. Sanford, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30th day of June, A. D. 1917. Henry T. Sanford, Notary Public. (Notarial Seal.)

STATE OF ILLINOIS,
Cook County, ss:

Ben Marcuse, being duly sworn, on oath deposes and says that he is one of the general partners named in the foregoing Certificate of Limited Partnership signed by Ben Marcuse, L. H. Morris, Frank A.

Hecht and Joseph M. Finn, and that the amount specified
732 in said Certificate to have been contributed by each of the special partners, Frank A. Hecht and Joseph M. Finn, the special partners, to the common stock, the aggregate of said amount being \$190,000, has been actually and in good faith contributed and applied to the same. Ben Marcuse.

Subscribed and sworn to by the said Ben Marcuse, before me, this 30th day of June, A. D. 1917. Henry T. Sanford, Notary Public. (Notarial Seal.) July—2-9-16-23-30-6.

Mr. Moses: I would like to reserve, if your Honor please, the privilege of offering in evidence the summonses in these two lawsuits I have spoken about, and the pleas and other papers appearing in those cases.

The Court: Anything further with this witness?

Mr. Jacobson: No.

Mr. Miller: Wait a moment, Mr. Marcuse. I want to ask you some questions.

Mr. Jacobson: Just a minute, Mr. Marcuse.

Q. Mr. Marcuse, there was an item of \$13,000 which was drawn by you on the account of Marcuse & Company about July 2nd, 1917. Can you give us the details of what that item represented, please?

A. Yes.

Q. What was it?

A. It represented the rent from March, April, May, June; it represented the purchase of fixtures and furniture from the administrators; it represented the amount paid to contractors who were building fixtures at the time; stationery, tickers—ticker, and salary of the board marker.

Q. Do those items appear to be exemplified in that audit, being the audit of January 1, 1918?

A. They are in here, yes.

Mr. Jacobson: That is all.

Cross-examination by Mr. Miller:

Q. Mr. Marcuse, I show you a business card (handing document to witness). Will you look at that, please?

A. Yes.

Q. Is that a sample of the style of the business card that Marcuse & Company used all through its business from the time it was organized until it failed?

733 A. No. This was one of them. We had two cards, one card leaving off the names entirely.

Q. You had one card with just "Marcuse & Company"?

A. Yes.

Q. Which did not give the names of any partners, either general or special?

A. Yes, sir.

Q. And then you had this style of card, giving the names of yourself and Mr. Morris, as general—or yourself and Mr. Morris, without any designation, and then, as special partners, Frank A. Hecht, and Joseph M. Finn?

A. Correct.

Q. Now, look at that letterhead (handing document to witness). Is that a sample or specimen of the letterhead that you used—your stationery?

A. Yes.

Q. And did all of your stationery describe the members of the firm, all of your letterheads, as that one does?

A. All letterheads; not the other stationery.

Q. All letterheads?

Mr. Jacobson: I object to that question. It calls for a conclusion. The question is, did that stationery describe all the members of the firm?

The Court:

Q. Did you have any stationery, cards or anything else on which anybody else's name as partner, general or special or limited, appeared?

A. No, but we had stationery where no names appeared.

The Court: Yes. You have got what you want in the answer?

Mr. Miller: Yes.

Now, I offer this card in evidence as Zuncker Exhibit 33.

Mr. Jacobson: That is part of your case.

Mr. Miller: I am not offering exhibits as part of your case.

And I offer this letterhead in evidence as Zuncker Exhibit 34.

(Whereupon said documents were received in evidence, marked Zuncker Exhibits 33 and 34, respectively, and were and are in words and figures as follows, to-wit) :

734

Zuncker Ex. 33 J.

Marcuse & Company, Stocks and Bonds, 122-126 So. La Salle St., Chicago.

Members New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade.

Ben Marcuse, Lew H. Morris. Specials: Frank A. Hecht, Jos. M. Finn.

Telephone, Main 20.

Zuncker Ex. 34 J.

Marcuse & Company, Stocks, Bonds, Grain, 122-126 So. La Salle St., Chicago.

Members New York Stock Exchange, Chicago Stock Exchange, Chicago Board of Trade.

Ben Marcuse, General Partner. Lew H. Morris, General Partner. Frank A. Hecht, Sr. Special Partner. Jos. M. Finn, Special Partner.

Telephone, Main 20.

Mr. Miller:

Q. Now, Mr. Marcuse, showing you this sheet of the dividend distributions that Mr. Moses called your attention to, is that a distribution of the portion of that four per cent dividend apportioned to the contribution—of the portion of that four per cent dividend apportioned to the contribution to the capital stock by Mr. Hecht and Mr. Finn?

735 Mr. Jacobson: I object to that question. The document speaks for itself, and it attempts to call for the conclusion of the witness.

The Court: Sir?

Mr. Jacobson: Your Honor, we object to that question. He is trying to vary the terms of that document by asking the witness a question which apparently calls for a variance.

Mr. Miller: I want to find out if the portion of the four per cent dividend, apportionable to the \$190,000 of the capital stock, is represented by those items on that sheet of paper.

The Court: He has already told in reply to your questions that each one of those amounts was four per cent on what the fellow had invested.

Mr. Miller: He didn't say that.

The Court: Well, if he didn't say it, your adversary lost about twenty minutes of good time with his questions.

Mr. Miller: He didn't say it.

The Court:

Q. That is what it is, isn't it?

A. Yes.

Q. Those items are equal to four per cent?—

A. Yes.

Q.—on what these various men, to whose orders the checks were drawn, had invested in the Hecht-Finn trust?

A. Yes.

Mr. Miller:

Q. Is that what you mean?

A. Yes.

The Court:

Q. Is that all?

A. Yes.

Mr. Miller:

Q. All right. In other words, it is four per cent on the \$190,000?

Mr. Jacobson: I object, your Honor. It is four per cent on different distributive amounts.

The Court: Don't waste my time. The aggregate is for four per cent on \$190,000.

Mr. Miller:

Q. That is right, isn't it?

A. Yes.

The Court: If you gentlemen will just get out of the jury box, probably a lot of those questions won't be asked here.

Mr. Miller:

Q. Is that right, the Court's statement?

A. Yes, that is right; four per cent on the contributions.

Q. Now, every other dividend on that \$190,000 was sent to the Chicago Title & Trust Company, wasn't it?

A. Yes.

736 Q. Why, didn't you send that one to the Chicago Title and Trust Company?

A. A suggestion was made by Mr. Hecht that it might save the expense of paying an extra commission to the Chicago Title & Trust Company, and we sent these checks out direct, but notifying the Chicago Title & Trust Company that we had done so.

Q. That is the reason, is it?

A. That is the reason, yes, sir.

Q. Now, you have a check here—you show here "Studebaker Brothers." You don't mean, do you, that there was a check made to Studebaker Brothers? Do you want to look at this document (handing document to witness)? Or was there a check made to Studebaker Brothers?

A. The account was Studebaker Brothers at the time.

Q. You mean the trading account?

A. The trading account, yes.

Q. But did you make out a check to Studebaker Brothers?

A. It appeared that we did, but judging from that check we must have changed that check and made it to some other person.

Q. Didn't you make out a check to Studebaker Brothers and send it over to Mr. Brown and he returned it to you?

A. That is possible. In fact, that is——

Q. With directions that those dividends should be paid to the Chicago Title & Trust Company?

A. Yes. He objected to the method of paying it direct at the time after it had been done, and I told him that I would notify the Chicago Title & Trust Company that we had done so.

Q. Now, that check was turned in and cancelled, wasn't it, and then you made out another one?

(No answer.)

Q. Let me help your recollection——

A. Yes.

Q. —by showing you a check you made payable to Mr. Gardner. (Handing document to witness.)

A. Yes.

Q. Mr. Frank G. Gardner?

A. Yes.

Q. Mr. Frank G. Gardner is an official of the Chicago Title & Trust Company, isn't he?

737 A. Yes. My recollections are that we made this check out to Studebaker Brothers at first, and then it was returned, and we cancelled it, and then we made out a check to Frank A. Gardner.

Q. And whatever dividends had been paid before on account of this \$190,000 had been paid direct to the Chicago Title & Trust Company, and whatever dividends were paid subsequently were paid direct to the Chicago Title & Trust Company?

A. Yes, sir.

Mr. Miller: That is all.

Mr. Jacobson: Now, your Honor, we offer in evidence as Petitioners' Exhibit 35 the document from which Mr. Miller cross-examined the witness.

The Court: All right.

(Whereupon said document was received in evidence, marked Petitioners' Exhibit 35, and was and is in words and figures as follows, to-wit:)

738

Pet. Ex. 35.

Marcuse & Co.

Dividend Distribution.

Jan. 1, 1919.

Name: Dividend Distribution.
Address: —.

Date.	Folio.	Dr.	Price.	Cr.	Price.	Dr.	Cr.	Dr. bal- ance.	Cr. bal- ance.	Days.	Dr. in- terest.	Cr. in- terest.
1918,												
Dec. 31.	4% on \$320,000.00	...	...	1,280,000	...	...	...	...	...
1919,				set aside.....	...	...		...	...	...	...	...
Jan. 18.	...	Theo. Regensteiner.	Cash.	.....	...	74,000	.....	...	...	...	...	...
	...	I. Grollman	"	.....	...	40,000	.....	...	...	...	...	...
	...	J. Finer	"	.....	...	100,000	.....	...	...	...	...	...
	...	Stude Bros.	"	.....	...	200,000	.....	...	...	...	...	...
	...	F. A. Hecht	A. K.	.....	...	100,000	.....	...	...	...	...	...
	...	Vette	L. Z.	.....	...	120,000	.....	...	...	...	...	...
	...	Zuncker	"	.....	...	100,000	.....	...	...	...	...	...
	...	B M.	"	.....	...	520,000	.....	...	...	...	...	...
	...	"	"	26,000	.....	...	...	...	...	...
						<u>1,280,000</u>		...	...	...	...	...
							<u>1,280,000</u>	...	...	...	...	...

Name: — — —.
Address: —.

739 Mr. Miller: Through pure inadvertence, your Honor, my friends neglected to offer this check payable to Mr. Gardner, which we returned and cancelled, and I offer that as Zuncker Exhibit 35, and with it, of course, the endorsements on the back of it showing that it was deposited to the credit of the Chicago Title & Trust Company.

(Whereupon said document was received in evidence, marked Zuncker Exhibit 35, and was and is in words and figures as follows, to-wit:)

Zuncker Ex. 35 J.

Marcuse and Company,
Stocks & Bonds,
122-124-126 So. La Salle St.

Chicago, Jan. 17, 1919. No. 1231.

Pay to the order of Frank G. Gardner \$2,000.00 Two Thousand Dollars. Marcuse and Company, By Ben Marcuse. To the Merchants' Loan & Trust Co., Chicago, Ill. 2-4. Countersigned: Emil O. Engstrom. On reverse side: Frank G. Gardner. Cancelling Stamp: Paid. (Stamp:) Pay to the order of Continental and Commercial Nat'l Bank. 2284. Of Chicago. 2284. Indorsements Guaranteed. Chicago Title & Trust Co., By Frank G. Gardner, Treas. (Stamp:) Paid through Chicago Clearing House. P. 3. M. 2. 6. 10. Continental and Commercial National Bank.

740 Mr. Jacobson: I have asked counsel to produce, so that we may offer in evidence before we close our case, all of the purchase slips and all of the sales slips given to Vette, Zuncker, Scott Brown or Richard Yates Hoffman by Marcuse & Company, and all of the statements rendered to them, or any of them, between June 30, 1917, and March 11, 1920,—so that we may offer in evidence such of those as we think are proper in our case. I assume they will be here.

Mr. Miller: Counsel means our trading accounts. He telephoned me at nine o'clock, or a little after, this morning.

The Court: You can bring them in when you get to it.

Mr. Miller: I have got as many of them as I could hurry out this morning.

The Court: Go ahead.

SCOTT BROWN, called as a witness on behalf of the Petitioning Creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. State your name, please.

A. Scott Brown.

Q. And your occupation?

A. Lawyer.

Q. And your office?

A. 208 South La Salle Street.

Q. Do you represent as a lawyer Clement Studebaker, Junior, and George M. Studebaker?

A. No, not generally.

Q. Do you represent them in any capacity?

A. In a business capacity in various affairs.

Q. For how many years have you so represented them in a business capacity?

A. About five years.

Q. Did you receive any instructions from George M. Studebaker with reference to Marcuse & Company? Yes or no?

A. No.

Q. Did you act for Mr. George M. Studebaker with reference to Marcuse & Company at any time since January 1, 1917?

A. Yes, with reference to the——

741 Q. I didn't ask you what. I just asked you for yes or no.

Mr. Miller: Well, now, wait a moment. Can he cross-examine this gentleman?

The Court:

Q. Have you acted since January 1, 1917, in any business capacity or in any business matter for George Studebaker?

A. Yes, I said I had.

Mr. Jacobson:

Q. Now, have you acted for the same gentlemen with reference to a so-called Hecht-Finn trust?

A. No.

Q. Were you present at any conference of lawyers wherein the Hecht-Finn Trust arrangement, or anything concerning it, was discussed at any time?

A. Yes.

Q. Now, when was the first conference you attended?

A. I think the first conference I attended with reference to that was about the 5th of June, in the office of Colonel Buckingham.

Q. What year?

A. 1917.

Q. Do you know Mr. Ben B. Marcuse, who testified here?

A. I do.

Q. Did he at any time call upon you after coming back from Boston in early 1917?

A. Yes.

Q. Now, did you at that time or had you at that time received any letter or information, from either Clement Studebaker or George Studebaker, with reference to Mr. Marcuse?

A. I can't answer that generally, Colonel—or Judge—because, of course, I had in various ways.

Q. Now, had you been instructed to discuss any matter with Mr. Marcuse by either of those gentlemen?

A. Not particularly.

Q. What did you—how did you come to discuss it with him?

A. It was my business.

Q. In what respect?

A. In any respect that they were dealing there.

Q. What did Mr. Marcuse tell you at that time—the first conference?

A. Concerning his trip to Boston?

Q. Yes.

742 A. I don't recall what he said.

Q. Well, in substance?

A. I don't recall in substance what he said.

Q. Do you remember why he was there?

A. Yes, I knew he saw Mr. Studebaker, yes.

Q. Now, did you at that time tell anything to Mr. Marcuse?

A. Probably.

Q. To refresh your recollection, did you say to Mr. Marcuse at that time that you would make an investment for George and Clement Studebaker of \$50,000 in his proposed brokerage business?

A. No, I didn't say that.

Q. Well, what did you say on that subject, if anything?

A. I said in substance—I can't remember the exact conversation nor the date—that I would be willing that there should be an amount of \$50,000 made available for some organization.

Q. What was the name of the organization?

A. I don't think it was discussed.

Q. By whom would the \$50,000 be made available?

A. That would be made available by——

Q. No. By whom would it be——

A. I am telling you, sir.

Q. Yes.

A. That would have been made available by the joint account of George M. and C. Studebaker.

Q. Didn't you know what sort of business this matter was going to be engaged in or concerned about?

A. In general yes.

Q. What was the business?

A. It was the business of organization of a brokerage firm in some way, to which he desired capital to be contributed.

Q. Now, did you ever discuss the fact that you had had a talk with Mr. Marcuse about making funds available with Mr. George M. Studebaker since that time?

A. I can't recall any time when I did.

Q. Did you ever talk to George M. Studebaker about having made funds available for that purpose?

A. Yes, after it was done.

Q. You did. Did he find any fault with it?

A. No, but——

743 Q. Now, that is an answer. You will have a chance to explain some other way. Did you mention the name of Richard Yates Hoffman. Did you suggest his name to Mr. Marcuse?

A. I don't think so.

Q. Who did you suggest the name of Richard Yates Hoffman to in this brokerage business?

A. I beg pardon?

Mr. Jacobson: Read the question.

(Question read.)

A. I don't recall that I suggested it.

Q. Do you know who did?

A. I think so.

Q. Who?

A. Colonel Buckingham.

Q. Who was Colonel Buckingham acting for?

A. He is the legal adviser to Messrs. Studebaker.

Q. Mention their names, please. For which Mr. Studebaker?

A. George M. Studebaker and Clement Studebaker, Junior.

Q. Now, did you know that Mr. Richard Yates Hoffman has signed a partnership contract?

A. I knew he had signed an agreement, yes.

Q. About April 2, 1917?

A. Yes.

Q. With respect to the business of Marcuse & Company?

A. Yes.

Q. And did you advise your client or principals that he had done so?

A. I advised the Messrs. Studebaker of that, but I can't say how soon. In the usual course of business.

Q. Shortly after it occurred?

A. Probably, yes.

Mr. Jacobson: That is all.

Cross-examination by Mr. Miller:

Q. Mr. Brown, referring to that contract of April 2nd, that Mr. Jacobson asked you about, did you or the Studebakers, to your knowledge, pay over any funds to anybody on account of or in connection with that contract?

A. No.

Mr. Miller: That is all.

Mr. Jacobson: That is all. We will now ask Mr. Sigismund David to take the stand.

744 SIGMUND DAVID, called as a witness on behalf of the petitioning creditors, having been first duly sworn, testified as follows:

Direct examination by Mr. Jacobson:

Q. What is your name?

A. Sigismund W. David.

Q. Your occupation?

A. Lawyer.

Q. And your office?

A. 1633 First National Bank Building.

Q. Are you a member of any law firm?

A. I am.

Q. State the name of that firm?

A. Stein, Mayer & David.

Q. And who are the individual members of that firm?

A. The individual members of the firm are Elias Mayer, myself, and Oscar Blumenthal and Ezra Cohn.

Q. I show you what purports to be a copy of a bill filed in the Superior Court of Cook County, and will ask you if that copy was prepared in your office, if you know.

A. I do not know, but I presume that it was. I found it in the files of our office. I was not present at the time it was prepared.

Mr. Miller: His presumption, I suppose, is not competent.

The Court: Strike out the presumption.

Mr. Jacobson: I will ask counsel if they will admit that this is a copy of a bill filed in the Superior Court of Cook County on or about March 10, 1920.

Mr. Miller: I never saw the bill, and know nothing about it.

The Court: Issue a subpoena to the Clerk of the Superior Court to bring in the files in that case. Proceed to something else.

Mr. Jacobson: That is all with this witness. Now, I ask counsel to produce here the statements sent to Scott Brown by the Chicago Title & Trust Company and the statements sent by Marcuse & Company. If those aren't here, I would like to put some of them in

745 the record, and after we have done that, your Honor, we will close. We could close at this time, and examine those when counsel have a little more time, and offer them later on.

Mr. Miller: Those statements contain a large amount of information private to those people, and would have nothing whatever to do with this controversy.

The Court: What is it that you have asked for?

Mr. Jacobson: We would like to examine any statements sent to Scott Brown by the Chicago Title & Trust Company, that have any bearing on the Hecht-Finn trust, or Marcuse & Company, or trades made by Studebaker or Scott Brown, or dividends received from Marcuse & Company.

The Court: The fact that they may disclose some private information, I do not know that that is a reason why it renders this evidence incompetent here.

Mr. Miller: I am not saying that that part of it is incompetent, but I am suggesting that as the reason why I do not think counsel ought to ask us to turn over to them now a lot of these statements, to go through at their leisure, and as they please.

The Court: You may confer with your adversary about that.

Mr. Miller: Here are the statements, and whatever there is in them—

Mr. Jacobson: We will agree to examine these papers only in the presence of counsel, and to make the examination short, and I will make this statement to the court: that we will not disclose any information that we may in any way learn from them, and we will make all the reasonable arrangements with them that are possible.

The Court: Is there anything else you have got here that you want to bring up?

Mr. Jacobson: No. We have also asked these gentlemen to produce all statements received by Vette and Zuncker and Regensteiner, and I ask permission to make the same examination, and to offer those that may be competent later on in the proceeding.

Mr. Miller: I want them to make out their case. In the first place, let me ask you, because that may shorten the matter: it appears here that all these men were traders and customers, buying and selling with this firm, and no doubt they received the usual statements that traders get from concerns of that sort, reports that we have bought this and sold that, and so forth. Does that have any bearing on the question here? Those are the statements they are asking for. If they have not, they throw no light on the issues we are trying here. Why should they go into the record at all? The fact that they traded back and forth repeatedly is in evidence, and that is all the statements would prove, if they were all here.

The Court: I don't know whether that is all they would prove or not. I don't know whether that is what they would prove. If that is all they would prove, I don't see anything in the controversy to shed any light on them, and I don't know that the presumption yet exists, that that is all they would prove.

Mr. Miller: Well, that is what they are asking for, is those statements.

The Court: Of course, as a general proposition, the adversary interest has a right to show on this hearing every penny of financial dealing in this Marcuse business, every item of business.

Mr. Miller: As traders?

The Court: As anything, on the theory that it is not to be presumed in advance that it is all traders' business. You gentlemen can have a conference about this, and you may be able to simplify it, when the court is not in session here. I will let you put it in afterwards, and if you are taken by surprise by anything that is disclosed, I will give you additional time to rebut it.

Mr. Miller: I am not afraid of the surprise, but I can not myself see any application of it to what we are trying here.

The Court: Have you anything further?

Mr. Jacobson: I desire to ask counsel to admit that Mr. Engstrom did send those audits to Vette, Zuncker and Scott Brown at the time Marcuse stated he gave directions so to do.

Mr. Miller: No, I cannot do that.

Mr. Jacobson: Your Honor, I promised to connect that proof up, but Mr. Engstrom is not here, and I will do it as soon as he is

here. I have sent for him, and we will make that proof. Now, we will close.

The Court: All right.

Mr. Miller: Then, are you gentlemen through?

Mr. Jacobson: We are through on the issue we have been putting in evidence on so far, Mr. Miller, with the reservation.

Mr. Miller: Will your Honor indulge me just a second?

747 Mr. Moses: I don't suppose it needs to be reiterated on this record that we are only trying out this general partnership issue, and that the other issues raised by these answers are not now being tried?

The Court: That is the Parliamentary situation.

(The petitioning creditors here rested their case.)

Mr. Miller: Now, if the Court please, on behalf of the people whom I represent, and each of them, I move to strike from the record all of the testimony, all of the evidence which has been introduced with reference to conferences, negotiations, contracts signed, or any documents that might have been signed prior to the execution of the final contract, which was executed on the 30th day of June. I speak of the final partnership contract, in the trust agreement which was executed on the 30th of June, on the ground——

The Court: All of the grounds you have heretofore urged in support of your objection to it as it came in?

Mr. Miller: Yes.

The Court: Overruled.

And thereupon, the respondents, to maintain the issues upon their part, introduced the following evidence, to wit:

MILTON J. FOREMAN, called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Miller:

Q. What is your name?

A. Milton J. Foreman.

Q. You live in Chicago?

A. Yes, sir. May I ask you to raise your voice a little?

Q. Yes. You live in Chicago?

A. Yes.

Q. What is your profession?

A. Practicing law.

Q. And your firm?

A. Foreman & Blumrosen.

Q. How long have you been at the Chicago Bar?

A. Since 1899.

Q. Do you know Henry Vette and Peter M. Zuncker?

A. I do.

Q. Have they ever been clients of your office?

748 A. They have.

Q. Did you represent them in connection with any matters at all relative to the organization of the firm to be known as Marcuse & Company?

A. We did.

Q. When was that, Colonel?

A. I think in 1917.

Q. Who composed your firm at that time? Who were the members of your firm at that time?

A. Milton J. Foreman, Edward Robertson, David Blumrosen.

Q. Were you present at a meeting which took place in your office on the second of April, 1917, at which a number of copies of a partnership contract were signed?

A. I was.

Q. I show you Zuncker's Exhibits 1 to 8, and will ask you to look at those documents and state if those are the documents that were signed on that occasion?

A. They are.

Q. Colonel, after these documents were signed on that day, what was done with them?

A. I retained possession of them.

Q. Was there anything said by you to the gentlemen who were present that day, with reference to what should be done with those documents?

A. Yes, sir.

Mr. Platt: Wasn't that reduced to writing, Mr. Miller?

Mr. Miller: No, the conversation that took place there, thence later in writing.

Q. What did you say, Colonel?

A. That those documents were not to become effective until certain things in relation to the firm of Von Frantzius had been accomplished, and that I was unwilling that they should be delivered and become effective until those conditions had been performed.

Q. Now, Colonel, I show you what purports to be copies of letters from you, marked Zuncker's Exhibits 9 to 16, both inclusive, and I will ask you if those documents were prepared in your office.

A. They were.

Q. Did you send these documents out to the various gentlemen to whom they are addressed?

A. I did.

749 Q. And did they come back to you, bearing the signatures, a portion of which appear at the bottom?

A. Yes, sir.

Q. Was the full signature on there of each of them when they came back?

A. Yes, sir.

Q. After these letters came back to you, Colonel, what did you do with the eight contracts and the eight letters?

A. I filed them for safety in our vault.

Q. Did they ever get out of the possession of your firm, to your knowledge, until they were delivered to me?

A. Not to my knowledge.

Q. Did you know Sidney Stein?

A. I did.

Q. Did you ever have any talks with him in connection with the proposed organization of the firm of Marcuse & Company?

A. Yes, sir.

Q. Had you met Sidney Stein in connection with the matter prior to the signing of these contracts on the second of April?

A. Yes, sir.

Q. Did you have any conversation with Sidney Stein subsequent to the second of April, 1917, relative to these proposed contracts, or the partnership which they were intended to evidence?

A. Yes, sir.

Q. Tell us about how long after the second of April, 1917, it was, when you had that conversation.

A. Well, my best recollection is that it was some time in May.

Q. Of that year?

A. Of that year; some time early in May.

Q. What was that conversation?

Mr. Platt: Now, if your Honor please, unless it was one of the conversations described by some witnesses produced for the petitioners here, I shall object. In other words, Sidney Stein is dead. My understanding is that we cannot be charged with conversations between Colonel Foreman—nobody can be charged with conversations between Colonel Foreman and Sidney Stein, who is dead, unless they are conversations that have been testified to by living witnesses.

That is my understanding of the principle involved.

750 Mr. Miller: This is what I propose to show: it appears in evidence that Mr. Stein represented Mr. Finn, Marcuse and Marcuse and Company, through these negotiations. I purpose showing by Colonel Foreman a notice to him by Mr. Stein that this arrangement, contemplated by these contracts, could not go on. In other words, there has been evidence——

The Court: Verbal notice?

Mr. Miller: Yes, sir, a conversation.

The Court: What do you say? What does your adversary say—I beg pardon, your colleague,—as to this legal proposition?

Mr. Miller: What legal proposition?

The Court: Where the other man, the other party to the conversation is dead.

Mr. Miller: That does not have a thing to do with it.

The Court: Well, I don't know.

Mr. Miller: If we were suing an administrator, or an administrator was suing us——

The Court: Have you the statute here.

Mr. Miller: —then we would have a situation that might apply, but it has not a thing to do with this situation.

The Court: As I understand it, the Illinois statute does not limit it to the case of administrators.

Mr. Miller: Yes, there isn't anything in the Illinois statute.

The Court: Yes.

Mr. Platt: May I go into your Honor's chambers and get it?

The Court: I don't know that I have got it.

Mr. Platt: I had the statutes here, but I came here from another court and did not bring my books.

The Court: You may, if you can, go into something else, pending that.

Mr. Miller: Well, that was my next step, right there.

The Court: Go up to the Circuit Court of Appeals library and get the Illinois statutes, Hurd's Illinois statutes.

Mr. Miller: In other words, if his proposition was correct, then every time a man died who was a party to a controversy, it would close the lips of the other man.

Mr. Platt: If your Honor please, the statute says that where one agent or representative dies——

The Court: My recollection is it is not limited to administrators.

Mr. Platt: There is a separate paragraph covering that.

Mr. Miller: Well, we will get it and see it in the meantime.

751 The Court: We will look at it.

Mr. Platt: I read Section 4, if your Honor please:

"In any action, suit or proceeding, by or against any surviving partner or partners, joint contractor or joint contractors, no adverse party or person adversely interested in the event thereof shall by virtue of Section 1 of this Act be rendered a competent witness to testify to any admission or conversation by any deceased partner or joint contractor, unless some one or more of the surviving partners or joint contractors were also present at the time of such admission or conversation. And in any action, suit or proceeding, a party to the same who has contracted with an agent of the adverse party, the agent having since died, shall not be a competent witness as to any admission or conversation between himself and such agent," unless such admission or conversation with the said deceased agent was had or made in the presence of a surviving agent or agents of the adverse party, and then only when the conditions are such that under Sections 2 and 3 of this Act he would be permitted to testify if the deceased person had been a principal and not an agent.

That is the section I have in mind, if the court please.

Mr. Miller: The reading of it disposes of the question, doesn't it, your Honor? Colonel Foreman is not an adverse party to anybody.

Mr. Platt: He is a person adversely interested in the event of this suit, if your Honor please.

Mr. Miller: How?

Mr. Platt: That is perfectly clear. In other words, it is perfectly clear, and I say this without any criticism of Colonel Foreman, or anybody else connected with this case, that every attorney who participated in the formation of this supposed special or limited partnership is adversely interested as against any decision which would render his clients or any persons for whom he was acting as attorney,

on behalf of whom he undertook to establish the special partnership, liable as a general partner. I do not think there can be any question about that proposition.

The Court: Suppose it had been with Colonel Foreman, would he be competent to testify?

Mr. Miller: Yes, as against the objection that is made now. Who is the adverse party here? There are some creditors here bringing us into bankruptcy, seeking to charge us with a liability for their debts. Did Sidney Stein represent them? No. He has no
752 connection with them, neither did Colonel Foreman. That statute, your Honor, hasn't any possible application. When the Court is through with it, may I look at it?

The Court: Of course, the substance of the thing,—I don't say that the statute will or will not apply here, but the substance of everything that the Legislature had in mind is here. Colonel Foreman is called here. The calling of Colonel Foreman as a witness is a hostile act to the fellow that Stein represented.

Mr. Miller: No. Stein represented Marcuse & Company, and Marcuse.

The Court: Stein also represented Mr. Finn. Finn sits here.

Mr. Miller: Well, what is hostile between us?

The Court: I am saying,—I am telling you, we have the substance here and not the statute. Mr. Finn, of course, stands to profit by the breakdown of the interest that calls Colonel Foreman here in its contention in this case, and the interest that calls Colonel Foreman and puts him on here as a witness, stands to profit by sustaining the theory in support of which Foreman is called, and by the same token, Finn loses. There is that controversy between you gentlemen, of course. There is no doubt about that, is there? There is that controversy.

Mr. Miller: What I am now showing—

The Court: That is true, isn't it? In other words, you would a little bit rather, I take it—you would a little bit rather that the proposition that Mr. Platt has suggested here, in his answer to this petition to adjudicate, namely, if Finn is liable then Zuncker and Vette are liable,—you would a little bit rather that Mr. Platt's inference or conclusion would turn out to be unsound.

Mr. Miller: Do you want me to answer that?

The Court: Yes.

Mr. Miller: From the standpoint of law, or from the standpoint of my sense of right and justice?

The Court: I am talking about money, cold money.

Mr. Miller: I don't think it makes any difference to us, in this controversy, what your ultimate decision is with reference to Mr. Hecht and Mr. Finn.

The Court: I am talking about the ultimate proposition. If Mr. Platt's clients are liable here, of course, Mr. Zuncker and Mr.

Vette would fight to the end against the next step, namely,
753 that Mr. Platt's clients, being liable, that your clients are liable, too, Vette and Zuncker. Of course, there is that collision of interest here. Now, on that interest, your side of that controversy calls Foreman as a witness.

Mr. Miller: He is not an adverse party in interest within the meaning of the statute.

The Court: I will hear from you on that subject. He is called here by an adverse party.

Mr. Miller: The statute itself, it seems to me——

The Court: You have a ground for a legal argument. There is no question about that.

Mr. Miller: Here is Section 4:

"No party to any civil action, suit or proceeding, or person directly interested in the event thereof, shall be allowed to testify therein of his own motion, or in his own behalf."

I am starting with the beginning of Section 2:

"Or in his own behalf. By virtue of the foregoing section, when any adverse party sues or defends as the trustee of any idiot, habitual drunkard, lunatic or distracted person, or as the guardian, administrator, heir, legatee or devisee of any deceased person, unless when called as a witness by the adverse party," etc.,

"and also except in the following cases."

Now, they are dealing with parties to a civil action, suit or proceeding, or person directly interested in the event thereof. Colonel Foreman is neither a party, nor a person directly interested in the event thereof, within the meaning of this statute.

Mr. Platt: On that last point, I don't agree with you.

Mr. Miller: Now, it may be that as a matter of choice or preference, or from a feeling that that is the right side of the controversy, he would prefer to have the contention of Vette and Zuncker prevail, but that does not make him an interested party, a party directly——

The Court: Your proposition is that that is an indirect interest?

Mr. Miller: Yes, sir.

The Court: That it has as much as can be said for it, that it is an indirect interest.

Mr. Miller: That kind of interest would put any witness on earth out of the running in a case where this question was raised. If there was any evidence that he had any leaning or choice or bias whatsoever, and that would not go to his credibility, as it properly goes, but it would go to his competency.

The Court: I have had an idea that the rule of the statute disqualified the fellow that acted as an agent, if it disqualified the principal.

Mr. Miller: I beg your pardon?

The Court: I had the impression that the statute disqualified the agent if it disqualified the principal. The reasoning would seem to apply, but the statute does not.

Mr. Miller: No, sir, the statute does not say so. Now, let us go to Section 4, and read that:

"In any action, suit or proceeding by or against any surviving partner or partners"——

That don't touch us. That means somebody that is dead, and they are proceeding against all live men.

"Joint contractor or joint contractors."

That don't touch us.

"No adverse party or person adversely interested in the event thereof."——

That don't include Colonel Foreman.

"—shall by virtue of Section 1 of this Act be rendered a competent witness to testify to any admission or conversation by any deceased partner or joint contractor unless some one or more of the surviving partners or joint contractors were also present at the time of such admission or conversation.

"And in any action, suit or proceeding, a party to the same who has contracted with an agent of the adverse party, the agent having since died, shall not be a competent witness as to any admission or conversation between himself and such agent."

Now, "And in any action, suit or proceeding a party to the same"——

Colonel Foreman is not a party to this proceeding.

"A party to the same who has contracted with an agent of the adverse party, the agent having since died, shall not be a competent witness as to such admission or conversation between himself and such agent, unless such admission or conversation with the said deceased agent was had or made in the presence of a surviving agent or agents of the adverse party, and then only when the conditions are such that under the provisions of Section 2 of this Act he would have been permitted to testify if the deceased person had been a principal and not an agent."

755 Now, it seems to me that that ought to put an end to this thing.

"In every action, suit or proceeding, a party to the same who had contracted with an agent who has since died"——

The Court: I will ask you the question I asked you before, if your client is in a different position here than Zuncker is.

Mr. Miller: Yes, sir, under the plain language of this statute, it only applies to a party to the litigation, and it can have no possible application to a third party, a man who is not a party to the litigation. If we were suing,—if this was a suit by us against Stein's principal, and we were seeking to prove by my principal, as against Stein's principal——

The Court: Or Stein.

Mr. Miller: Or Stein.

The Court: Against the principal.

Mr. Miller: Or Stein.

The Court: Prove a conversation with the agent of Stein.

Mr. Miller: Yes, sir, a conversation between my principal and the dead agent, then my friends could read this statute to you with some plausibility. But this statute, in so far as it affects the competency of the man in the witness box, is limited to a party to the proceeding, and it says so in language too plain to be misunderstood. So he is a competent witness, because he is not a party to this proceeding.

Mr. Platt: If your Honor please, my contention rests upon the proposition that while the words "or person adversely interested in the event thereof" are not repeated in the second paragraph, the whole language of the Act, and the whole reason of the Act, carries over. One is that you shan't testify if the other party is dead, party or person adversely interested, and the other, that you shan't testify if the witness is dead. Now, on the proposition that Colonel Foreman is adversely interested, and directly adversely interested—I am not speaking of any feeling on his part, any friendship for his client, and all that, but on the question that he is adversely interested, I beg to say that it is my understanding that if, as the evidence of Zuncker and Vette, for instance, has seemed to disclose, the attorneys who were advising them in this matter, advised them that if the law of Illinois were complied with, they were not liable beyond the amount of their contribution, although they took the profits
756 of the business, and undertook to prepare an agreement that would protect them from liability, and accepted the payment of fees therefor, that the attorneys are liable over to the client for the result of what might be considered—would be considered to be their negligence, and therefore are persons directly adversely interested in the proposition. Now, in effect, and in substance, if your Honor please, so far as the ranging of parties is concerned, there is no difference between this proceeding in substance,—I am not talking of form,—and a proceeding for contribution by my client, if they had been held liable to pay and had paid. If it were a suit for a hundred dollars, and we paid the hundred dollars, and we then turned around and sued Mr. Miller's clients for contribution. It is a suit in bankruptcy where the mere attempt to meet the obligation in the first place would ruin us, and therefore we are here now insisting that the contribution shall be made in advance of the ruin, and not afterwards. So, so far as the grouping of the parties is concerned, there is no question at all as to the fact that Mr. Miller's client and my own client on this issue are hostile. Of course, in the suit for the one hundred dollars, the issues would be joined, where we were attempting to defeat the plaintiff in the hundred dollar suit, but the moment the question of contribution comes, then our interests are directly adverse. Now, of course, this is a suit before the court, and I apprehend it is not of the utmost importance, whether the application of this law is made, as it is not a jury case. But I do insist, and I say it in all confidence, that Colonel Foreman and Colonel

Buckingham and every lawyer who represented to his client, if he did represent to his client, that there was no liability beyond the contribution, who acted as attorney and gave that advice to his clients, he is just as directly and just as adversely interested in the result of this suit as the clients themselves. And on that proposition I feel the utmost confidence.

Mr. Miller: I just want to say one word, and then I am through. Counsel has told—called your attention to the fact that in that portion of this section which controls the question we are now urging, the language about any party adversely interested, does not appear. In other words, this section is divided into two parts. The first part:

“In any action, suit or proceeding by or against any surviving partner or partners, joint contractor or joint contractors, no
757 adverse party or person adversely interested in the event thereof shall be made competent.”

Then we get down to the agent question, and it is noticeable and significant that the Legislature there omits the language about any person adversely interested therein. So that if there was anything in his contention that Colonel Foreman is a person adversely interested, which I deny, or that is not what that language means, but if that was what the language meant, the very fact that the Legislature in dealing with the agent—testimony as to a conference with an agent were eliminated and left out of the portion of the section, the language about a person being adversely interested, it shows that it did not intend to include them.

The Court: Well, what did the Legislature do that for? Assuming that to be true, what is the explanation of leaving it out?

Mr. Miller: Because they did not intend it to apply.

The Court: Certainly they didn't, but why not? As a progressive business, business being turned over more and more each day to agents, why would it be left out?

Mr. Miller: Don't try to hold me responsible for that.

The Court: I am not.

Mr. Miller: Or ask me for reasons, as to what the Legislature did.

The Court: It has been the law for years, how many years? How many years has it been on the books?

Mr. Miller: Oh, this is an old statute, but you know I was in the Legislature once and therefore I wouldn't undertake to give reasons for things the Legislature does.

The Court: I will tell you what you can do: you can go on with this. It is a court case, and the Court of Appeals will try this out originally, anyhow. All of my inclination is to let in anything that there is a shadow of justification for letting in, but I had an impression, as I sat here during the trial of this case, and heard Stein's name mentioned, heard some may say, "Who did that?" "Well, Stein did that." "How did that happen?" "Well, that happened because Stein said so and so." Then it developed that Stein was dead. I had an idea that the statute would shut it out. Of course, if it shuts out anything, it ought to shut this out. If there is any sense in sealing the lips of a survivor in any sort of situation, this

ought to be shut out, because nobody can have a greater interest in the event than the lawyer can have who is responsible for the conduct of his client.

758 Mr. Miller: Financially?

The Court: No, no, solely responsible. There can not be any greater interest than the interest of the lawyer, whose spoken word to the client causes his client to sign his name to a three million dollar obligation. There is no greater interest in the world in the outcome of the controversy. But go ahead with it. Go ahead with it. I may strike it out before a decree is entered, but go ahead.

Mr. Miller:

Q. I asked you, Colonel, about a conversation with Sidney Stein, which you say took place some time in May, 1917. What was that conversation?

A. Mr. Stein——

Mr. Platt: It may be agreed, if the Court please, that my objection goes to all these questions?

The Court: Yes, without their being repeated. The record shows that they stand as though they were repeated to each question.

Mr. Platt: Very well.

A. Mr. Stein called me up and told me that the proposed partnership agreement entered into—proposed to be entered into and signed in my office was off; that it could not be executed or carried out.

The Court:

Q. You say that was some time in May?

A. Yes, my recollection is, sir, the first week in May.

Q. When did you go away that summer? When did the Cavalry go away from here? That was after the summer, wasn't it?

A. Oh, we didn't leave here until the fall, but I was practically out of the office all the time at that time.

Mr. Miller:

Q. Now, did you notify Mr. Zuncker of that fact?

A. I did.

Q. As between Mr. Vette and Mr. Zuncker, your connection with Mr. Vette and Mr. Zuncker in these transactions, did you see them both, one as frequently as the other, or was there one of them that you had most of the business with?

A. One of them.

Q. Which one was that?

A. Mr. Zuncker.

Q. Did you meet Mr. Stein again at any later date, in connection with a proposed organization of Marcuse & Company?

759 A. My recollection is that I met him a considerable period afterwards, some time in June.

Q. Were you active in the office at that time?

A. I was not.

Q. What, if anything, had occurred to take you out, or keep you out of the city, constantly, or most of the time, whichever it was?

A. The United States had got into war.

Q. Well, what I mean is, and what I am trying to find out is, whether you were then, at that time, still busy in your office, or whether you were devoting most of your time outside of your office, in connection with your regiment?

A. I was devoting most of my time to my regiment.

Q. Did you turn the matter over to anyone in your office then?

A. I did.

Q. To whom did you turn it over?

A. Mr. Robertson.

Q. When did you get back from the war, Colonel, back to your office again?

A. In June, 1919.

Q. Showing you again Zuncker's Exhibits 1 to 16, both inclusive, I will ask you to state whether or not you saw these documents at any time after you came back from the war, and returned to your office.

A. I did.

Q. Where were they?

A. In your possession.

Q. Do you know how they got into my possession?

A. I understand that my partner, Mr. Blumrosen, found them in the files and turned them over to you.

Q. Did you see them before they were brought up and turned over to me?

A. I might have, but I am not sure of it.

Q. To refresh your recollection, if I can Colonel, didn't you come with Mr. Blumrosen when they were turned over to me?

A. I think so.

Q. About how long ago was it when those documents were turned over to me?

A. Well, it is since this partnership has been attacked, some time in the last four or six weeks, some where along in there.

760 Q. Was it since the beginning of these bankruptcy proceedings?

A. Oh, yes.

Q. Colonel, when you saw these documents, Zuncker's Exhibits 1 to 16, both inclusive, on this last occasion, did you examine them sufficiently to observe whether or not the signatures to them, or what remains, was in the same condition that they are now?

A. I did.

Q. What is the fact?

A. They were in the same condition that they are now.

Q. Colonel Foreman, did there take place or occur in your office, in the month of May, a conference between yourself, Egbert Robertson, Ben Marcuse, Vette, Zuncker, Regensteiner, Scott Brown and Sidney Stein, in which there was a discussion of what had taken place in New York in connection with the organization of this proposed

firm, and in which Mr. Marcuse, or Mr. Stein, explained to all of you gentlemen present why that firm could not go on, and that it had been arranged for Hecht and Finn to go in as special partners and represent all of these other men who had intended to be special partners under this contract that was signed in your office. Did such a meeting ever take place?

A. No, sir.

Mr. Miller: You may cross examine Colonel Foreman.

Mr. Platt: Will you give me the telegram of May 8, please.

Cross-examination by Mr. Platt:

Q. Now, Colonel, will you be good enough to look at this telegram, which has been marked Petitioners' Exhibit 15? Will you read it and acquaint yourself with its contents?

A. Beg pardon?

Q. Read it, please, and familiarize yourself with its contents. (Handing paper to the witness.) Colonel, did you ever see that telegram before?

A. Not to my recollection.

Q. Now, this telegram is dated May 8, 1917. You say you had a telephone conversation with Sydney Stein in May, 1917?

A. Yes, sir.

Q. You said you thought it was during the first week of May, 1917. Since you have seen this telegram, do you not think it was shortly after the 8th of May, 1917?

A. It might quite well have been.

Q. And in substance, what Mr. Stein did was to communicate to you the contents of this telegram as being the reason why it was impossible to go on with the arrangement that you had made, isn't that correct?

A. Well, that might have been part of it. I don't recall the conversation in detail.

Q. Well, now, Colonel, you do recall, do you not, that about this time you learned that the rules of the New York Stock Exchange, or the decision of the New York Stock Exchange made it impossible to carry out the deal as you had formulated it?

A. Well, I learned at a—some time about that time, that the New York Stock Exchange had raised some objection to the form of partnership.

Q. Now, you learned that from Mr. Stein, did you not?

A. My impression is that I did.

Q. And you learned it from Mr. Stein over the telephone, did you not?

A. Well, it may have been part of the same conversation.

Mr. Platt: That is all.

The Court: Call your next witness.

Mr. Miller: Is that all, gentlemen? Are you gentlemen all through?

Mr. Jacobson: Yes.

Mr. Miller: That is all, Colonel.

GEORGE T. BUCKINGHAM, called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Miller:

Q. What is your name?

A. George T. Buckingham.

Q. You live in Chicago?

A. Yes, sir.

Q. What is your profession?

A. Lawyer.

762 Q. How long have you been at the bar?

A. Twenty-six years.

Q. What is your firm?

A. Defrees, Buckingham & Eaton.

Q. Was that your firm in 1917?

A. It was.

Q. Mr. Richard Yates Hoffman is a member of your firm?

A. An associate member of that firm.

Q. Do you know George M. Studebaker?

A. I do.

Q. Clement Studebaker, Jr.?

A. I do.

Q. Have you had any business relations with them?

A. Yes, sir.

Q. What?

A. I have been counsel for those gentlemen for a number of years.

Q. Do you know Scott Brown?

A. I do.

Q. Are you familiar with what is known as the Studebaker Brothers Trust?

A. I am.

Q. Had you anything to do with the organization of Studebaker Brothers Trust?

A. I drew the instrument under which it was created, and have had to do with its operation since.

Q. Do you know Mr. Marcuse?

A. Yes, sir.

Q. Sidney Stein?

A. Yes.

Q. Did you ever have any conferences with Mr. Marcuse or Mr. Stein, or both of them, together, with reference to the organization of a firm of Marcuse & Company?

A. Yes.

Q. It appears in evidence, Colonel, that a certain document, dated April 2nd, 1917, was signed by various gentlemen in Colonel Foreman's office on that date. Were you present on that occasion?

A. Not. I was out of town. Had been for some weeks.

Q. Did you have any talk with Sidney Stein relative to that document subsequent to April 2nd, 1917?

A. I did.

763 Mr. Platt: My objection goes in as to each witness, I assume, Mr. Miller.

Mr. Miller: Yes.

Q. Where was that talk, and what was it?

A. The first conversation I had with Mr. Stein about it was some little time after April 2nd. I think I returned to Chicago about the 10th or 12th of April that year, and after I had been here some days and had learned about this transaction in Colonel Foreman's office, I met Mr. Stein over at the Probate Court, and he asked me if I had heard about the troubles he was having with that thing. I told him I had.

Q. I am coming particularly—what I have in mind particularly is this:

The Court: We will suspend until 2:30 o'clock.

(Thereupon a recess was taken until 2:30 o'clock P. M. of the same day.)

In the Matter of MARCUSE & COMPANY, Bankrupts.

Landis, J.

Wednesday, May 12, 1920—2:30 o'clock p. m.

Court met pursuant to adjournment.

Present: Same as before.

GEORGE T. BUCKINGHAM, resumed the stand, was further examined by Mr. Miller, and testified as follows:

Q. Just before we took our noon recess, Colonel, I asked you whether or not you had had a conversation with Mr. Sydney Stein, relative to the matter of whether the partnership, as outlined by the contract of April 2nd in Foreman's office, could go on or not.

A. Yes.

Q. Tell the Court, as nearly as you can, about when that conversation took place.

764 A. I can't state exactly, but I think it was early in May. It was quite a while prior to June 5th. That is the only date I can tie up to.

Q. Where did it take place?

A. In the County Court House.

Q. What, if anything, did Mr. Stein say to you at that time?

A. He said that he was very much discouraged about this Marcuse situation; that he had worked on it long and faithfully and had got it up to where it was, and then to have it fall down was a great disappointment to him.

Q. Did he mention anything at that time, or say anything to you at that time as to what the difficulties in the way were? Did he give you any indication as to that? I want that only in brief.

A. Well, I had learned—

Mr. Jacobson: I object, your Honor.

The Witness: —from other sources that there were difficulties, and he was discussing those with me.

Mr. Jacobson: I move to strike out what the gentleman has learned.

The Court: What is it?

Mr. Jacobson: I move to strike out the last part of that answer.

The Court: He has learned?

Mr. Jacobson: Yes, your Honor.

Mr. Miller: I don't object to it.

Q. Colonel, the point of my inquiry is, did he in that talk indicate to you anything as to the character of the difficulties or merely observe that there were difficulties?

A. No. He said that the stock exchange rules had made a difficulty about carrying that out, and also that the correspondent whom he expected to have in New York had interposed objections to a partnership containing a number of persons. He didn't make that to me as an outright statement, in so many words, but in the course of conversation with reference to his disappointment of the thing having fallen down. That wasn't the first information I had of that.

Q. From whom did you get your first information?

A. From Mr. Brown, I think.

Q. Mr. Scott Brown?

A. Yes.

Q. Yes. Now, Colonel, did you have a conference with
765 Mr. Marcuse and Mr. Sydney Stein in your office in the early part of June, 1917?

A. I did.

Q. Who other than Mr. Marcuse, Mr. Stein and yourself were present?

A. Mr. Scott Brown and Hoffman.

Q. As near as you now can guess, fix the date of that conference.

A. It was on June 5, 1917.

Q. Now, tell the Court, as fully as you can, the substance of that conference, indicating who did the talking and what was said by each one of them.

A. Well, Mr. Stein and Mr. Marcuse came to the office to meet me and Mr. Brown by appointment. I called Mr. Hoffman in. Mr. Stein, reverting to the things that had taken place, and going over to some extent the difficulties he had had with reference to getting together the firm of Marcuse & Company, and the fact that it had fallen down and couldn't be put through, said that he wanted to get up another arrangement and that that was why he had asked for this interview, and that he wanted the Studebakers, if they would do it, to put up a hundred thousand dollars instead of fifty thousand dollars; that Mr. Clement Studebaker at one time had said that he might consider a \$100,000, and that he wondered if he couldn't get \$100,000, because he could only have two special part-

ners, and he would like to have one representing the Studebaker interest, if he could, with \$100,000, and that he would like to have Mr. Hoffman, or somebody else representing that interest, to be a special partner in the firm that he proposed to organize, and that he would like to have \$100,000 from that interest invested in it.

Q. What did you say, or Mr. Brown, or whoever made a reply?

A. Well, I went on to say to him that I had—when I learned of this other thing that I was quite displeased with it, and that I would not consent to having anybody from our group be a special partner in that partnership or any partnership, but that they had had this other arrangement that had been on deposit there, and now that it was off I was unalterably opposed to any of my clients becoming a special partner, or assuming a special partner's liability, in any partnership, and that we would not consent to put up \$100,000, as far as my advice went, but, on the contrary, 766 \$50,000 was all we would consider, and that that was going to be contributed, if at all, from the Studebaker Brothers Trust. I told him that in that view of the situation it seemed to me that the only thing that could be done, if anything was done, was that if he formed a partnership, and the personnel of it was satisfactory to us, that we would come in to the extent of \$50,000, if he would arrange to have a trust declared as to the profits of the partnership after they were separated and segregated from the partnership. I think I termed it a Massachusetts Trust, perhaps, and I referred him to the fact that on February 26th—I do not know that I said "February 26th"—but that at a former interview at the Union League Club, which interview did occur on February 26th, that I had suggested that idea, and Mr. Stein said that I was unreasonable and that he thought I was trying to block the game, and that he had had a great deal of difficulty in getting that thing together in its former form with various people, and he thought this presented an insuperable obstacle, but that he would see what could be done, and so he and Mr. Marcuse went away.

Q. Well, have you given me now all that you recall of that talk?

A. Well, I couldn't—that is all I now think of. That is the substance of it.

Q. Well, to refresh your memory, was there anything said by you as to the character of an investment you would be willing to make, or the character of the—

A. Oh, yes. I said to him that whatever money we put up would be from Studebaker Brothers' trust, and that in order to do that I would require a certificate—I wanted a trustee's certificate, one that could be put into the trust fund, and that that necessitated some sort of a trust arrangement, and that I wanted this thing, if it was done at all, to be done along those lines, and that that was the only basis upon which I would consent that my clients should put in any money into the thing at all.

Q. Was Mr. Ben Marcuse present at all that conference?

A. He was.

Q. Did Mr. Stein submit to you thereafter a form or draft of a trust agreement?

A. Yes. He sent me a form or draft of a trust agreement a week or two weeks later.

Q. I show you two documents here, and I will ask you if either one of those documents is the one he sent you, and if so, which one. (Handing document to witness.)

And the reason I do that is because I am not sure which one it was myself, your Honor.

A. That document is the one he first sent me (indicating).

Mr. Miller: I ask that this document be marked Zuncker Exhibit 36.

(Whereupon said document was marked accordingly.)

Mr. Miller:

Q. Did you have any talk with Mr. Stein subsequently with reference to Zuncker Exhibit 36?

A. I did.

Q. Where was that talk?

A. I think it was over the telephone.

Q. What, if anything, did you tell him?

A. I told him, in substance, that that draft didn't meet my views of what I had expressed to him was desirable to have in a contract in which I could be willing to have my clients take a trust certificate under; that this draft failed to meet the requirements that I had in mind in several particulars.

Q. Did he submit to you another document?

A. He did.

Q. Look at this document, please, and state if that is the one he submitted to you (handing document to witness?)

A. He did. This is the one that he later submitted.

Mr. Miller: I ask that this be marked Zuncker Exhibit 37, and I offer this in evidence, and Zuncker Exhibit 36 in evidence, too.

Mr. Platt: I haven't any objections to those, except the general objections I made to conversations with Mr. Stein, deceased.

(Whereupon said documents were received in evidence, marked Zuncker Exhibits 36 and 37, and were and are in words and figures as follows, to-wit:)

Zuncker Ex. 36 J.

Know all men by these presents that

Whereas, the undersigned, Frank A. Hecht and Joseph M. Finn, of Chicago, Cook County, Illinois, (hereinafter sometimes referred to as Trustees), have become special partners in the firm of Marcuse & Co., composed of Ben Marcuse and L. H. Morris, both of Chicago, Cook County, Illinois, as general partners, and the said Frank

768 A. Hecht and Joseph M. Finn, as special partners, for the purpose of engaging in the brokerage business for a term of five (5) years beginning the 1st day of April, A. D. 1917, and expiring the 31st day of March, A. D. 1922, and

Whereas, the undersigned, Frank A. Hecht and Joseph M. Finn, have jointly contributed to the capital of said partnership in cash the sum of One Hundred and Ninety Thousand Dollars (\$190,000), to which said sum of One Hundred and Ninety Thousand — (\$190,000), the following persons (hereinafter referred to as Beneficiaries) have contributed the amounts set opposite their respective names, to-wit:

Frank A. Hecht.....	\$25,000
Joseph M. Finn.....	31,500
Richard Yates Hoffman.....	50,000
Theodore Regensteiner.....	28,500
Henry Vette.....	30,000
Peter M. Zuncker.....	25,000

and

Whereas, the said trustees under the terms and provisions of partnership agreement creating said partnership will receive from said partnership six per cent (6%) interest upon the said sum of One Hundred and Ninety Thousand Dollars (\$190,000) provided the payment of such interest will not reduce the original capital contributed by said trustees, and said trustees will also receive a certain portion of the net profits arising from said co-partnership business to which said partnership contract reference is hereby made and by reference thereto the same and all of its provisions is made a part hereof with the same force and effect as if herein recited at length, and

Whereas, the said Frank Hecht and Joseph M. Finn have jointly acquired their interests as special partners in said firm as trustees for all of the said beneficiaries and their heirs, administrators, executors and personal representatives;

Now, Therefore, the said Frank A. Hecht and Joseph M. Finn do hereby acknowledge and declare that they received from each of the beneficiaries above named the amount set opposite their respective names for the purpose of contributing said sums of money to the capital of said partnership of Marcuse & Co. and that the interests of said trustees as special partners have been created and received and shall and will be held by said trustees subject to and upon all of the following express trusts:

769 (1) That all sums received by said trustees as interest and/or as distribution of profits or otherwise from said partnership shall, by said trustees, be immediately apportioned among, and paid over to, the beneficiaries in the proportion which the contribution of each beneficiary bears to the total capital of One Hundred and Ninety Thousand Dollars (\$190,000) contributed to said partnership by said trustees, and in the event of a dissolution or winding-up of said partnership, said trustees shall distribute all such moneys, property and effects, as may come to their hands, among said beneficiaries as soon as the same is or may be received in like proportions.

(2) Said trustees agree that they will hold and manage said trust property to-wit: the entire interest of said trustees as special partners in said partnership, at all times subject to and upon the following express limitations and conditions:

(a) That any and all expenses incurred in the operation of said business and that may be required for the purpose of managing and carrying on the same and that all losses of every kind and nature sustained in said business shall be paid by said trustees out of said capital fund of \$190,000 and charged against the interests of the beneficiaries in the same ratio and proportions as the beneficiaries are entitled to profits. The said beneficiaries shall not be or become personally liable for any such expense or loss or any part thereof, but the liability of said beneficiaries and each of them shall, at all time-, be limited to the amount contributed by them respectively to the said fund of One Hundred and Ninety Thousand Dollars (\$190,000).

(b) That all and singular the profits earned in said partnership business to which special partners are entitled shall be taken or drawn out of said business by said special partners twice a year to-wit: On April first and November first of each year, and promptly distributed among said beneficiaries.

(c) That each and every of said beneficiaries shall and may, at all reasonable times, without any interference, interruption or hindrance by said trustees or said general partners, have access to the books of account of said partnership, and shall, at least, once in each year, be furnished by said trustees with a true, just and perfect inventory and account of all of the assets and property of said partnership and of all the profits and increase of said partnership and of all losses sustained in and about said partnership business and of all payments, receipts, disbursements and all other things by the said general partners made, received, disbursed, acted upon or suffered in said co-partnership business, and shall also, on or about the first day of each month during the term of said co-partnership, be furnished with a monthly trial balance of and pertaining to the accounts and conditions of said co-partnership business, as and when the same shall or may be furnished to said trustees by the general partners of said partnership.

(d) The said trustees shall designate in writing such persons or firms to act as auditors of the business of said co-partnership and from time to time to change such designation and designate other persons or firms, as the beneficiaries having contributed a majority in amount of the total fund of One Hundred and Ninety Thousand Dollars (\$190,000) shall, in writing, require.

(e) Should the auditor or firm of auditors designated by said beneficiaries under the provisions hereof, at any time certify in writing to the trustees or the beneficiaries that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that said Marcuse is neglecting said business or is incapacitated, and by

reason thereof, is not properly managing the business of said firm, then said certificate shall be, as between the said trustees and the said beneficiaries, and as between said trustees and said general partners, conclusive and binding evidence of the facts therein recited and the said trustees shall, upon the written direction of a majority of said beneficiaries, cause all necessary steps to be taken to dissolve said firm.

(3) The interests of the beneficiaries created hereby are hereby declared to be and shall be and be taken to be personal property and upon the death of any beneficiary, the interest shall pass as other personal property. The interests of the beneficiaries shall not be transferred, assigned, pledged or in any manner conveyed or disposed of by the beneficiaries or any of them except with the unanimous consent of all of the other beneficiaries given in writing. Upon the death of any beneficiary, the remaining beneficiaries shall have the exclusive right and privilege of purchasing the interest of the deceased beneficiary at its cash value to be ascertained within thirty (30) days after such death upon the taking of an inventory and account of all of the property, assets, liabilities and affairs of said co-partnership upon payment by the remaining beneficiaries, within ninety (90) days after the date of such death, of such cash value with interest thereon from the date of death to the date of consummation of purchase at the rate of six per cent. (6%) per annum, to the legal representatives of such deceased beneficiary. No beneficiary shall have any right to institute any action at law or suit in equity for dissolution of said partnership or for any relief against said partnership or for the protection of the trust property or for the enforcement of any covenant hereof, or for any other remedy, unless a majority of the beneficiaries shall have made written request upon the trustees and shall have offered to the trustees reasonable opportunity either to proceed to take such action or institute such suit or proceeding in their own names for the benefit of all of the beneficiaries hereunder, nor unless also the majority of said beneficiaries requesting such action shall have offered to the trustees adequate security and indemnity against all costs, expenses and liabilities to be incurred therein or thereby, and such written request and indemnity of a majority of the beneficiaries are hereby declared in every such case at the option of the trustees to be conditions precedent to the execution of the powers and trusts hereby declared and of the powers and rights created under said partnership contract and to any action or cause of action, or for any remedy at law or in equity or otherwise; it being intended that no one or more of said beneficiaries shall have any right, in any manner whatever, to affect, disturb or prejudice the said co-partnership contract or the option of said co-partnership thereunder, except in the manner herein and in said co-partnership contract provided, and that all proceedings at law or in equity shall be instituted, had and maintained by the trustees in the manner and subject to the conditions herein and in said co-partnership contract provided and for the equal benefit of all of the bene-

ficiaries. Upon the death of any beneficiary, the heirs, devisees, administrators, executors or personal representatives of such deceased beneficiary shall take the interest of the deceased beneficiary subject to and upon all of the conditions and limitations hereof and herein expressed.

(4) Said trustees shall not, by virtue of said trust or any of the terms and conditions hereof or any of the provisions of said co-partnership contract, or by virtue of anything arising here-
 772 under or under said co-partnership contract, be or become personally liable on account of anything done or omitted to be done whatsoever, except only that each trustee shall be liable personally for his own wilful acts of wrong-doing. The trustees shall be entitled to reimbursement of all expenses, counsel fees, disbursements and charges incurred in and about the execution and performance of said trusts, and the exercise and performance of their duties and powers hereunder, and shall have a lien therefor upon the interest of such beneficiaries and each thereof paramount to the rights of said beneficiaries, and any person or persons claiming by, through or under them. The trustees shall be protected in acting upon any notice, request, direction or consent or other instrument or paper by them believed to be genuine and to be properly executed.

(5) In the event of the death of either of said trustees, the survivor of said trustees shall forthwith succeed to all the rights, duties and obligations herein contained and to all of the right, title and interest of both trustees as special partners in such co-partnership and shall act in the place and stead of both of such trustees with like force and effect as if such survivor trustee had originally been the sole trustee hereunder. In the event of the death of the surviving trustee, then the beneficiaries shall, by an instrument or concurrent instruments in writing, signed by beneficiaries having contributed a majority in amount of said fund of \$190,000, designate a successor trustee acceptable to, and approved by, the general partners of said partnership and such successor trustee shall forthwith become the special partner in said co-partnership business in the place and stead of the deceased surviving trustee, and shall forthwith succeed to all of the rights, duties and obligations herein created, and shall act in the place and stead of the deceased surviving trustee with like force and effect as if originally the sole trustee hereunder.

In Witness Whereof, the said Frank A. Hecht and Joseph M. Finn, as trustees as aforesaid, have hereunto set their respective hands and seals, this — day of —, A. D. 1917. — — —
 (Seal.) — — —. (Seal.)

We, the undersigned, Ben Marcuse and L. H. Morris, general partners in the co-partnership of Marcuse & Co.; do hereby acknowledge that we have read the foregoing instrument and are
 773 familiar with its contents and all of the terms, conditions and provisions thereof, and we hereby jointly and severally

agree to do or cause to be done any and all acts and things, and to execute or cause to be executed any and all documents, writings and instruments necessary or proper in order to fully and effectually carry out the terms and provisions of the foregoing declaration of trust.

Witness our hands and seals this — day of —, A. D. 1917.
— — — (Seal.) — — — (Seal.)

Zuncker Ex. 37 J.

Know All Men By These Presents That

Whereas, the undersigned, Frank A. Hecht and Joseph M. Finn, of Chicago, Cook County, Illinois, (hereinafter sometimes referred to as Trustees), have become special partners in the firm of Marcuse & Co., composed of Ben Marcuse and L. H. Morris, both of Chicago, Cook County, Illinois, as general partners, and the said Frank A. Hecht and Joseph M. Finn as special partners, for the purpose of engaging in the brokerage business for a term of five (5) years beginning the 1st day of April, A. D. 1917, and expiring the 31st day of March, A. D. 1922, and

Whereas, the undersigned, Frank A. Hecht and Joseph M. Finn, have jointly contributed to the capital of said partnership in cash the sum of One Hundred and Ninety Thousand Dollars (\$190,000), and will receive from said partnership six per cent. (6%) interest upon the said sum of One Hundred and Ninety Thousand Dollars (\$190,000) provided the payment of such interest will not reduce the original capital contributed by said trustees, and will also receive a certain portion of the net profits arising from said co-partnership business under the terms and provisions of the partnership contract creating said partnership dated the 1st day of April, 1917, to which reference is hereby made and by reference thereto, the same and all of its provisions is made a part hereof with the same force and effort as if herein recited at length, and

Whereas, said trustees intend to hold the interests acquired by them jointly as special partners in said firm as trustees for and upon the trusts hereinafter declared and for the purpose of defining
774 the interests of persons interested in said trust propose to issue certificates for Three Hundred and Eighty (380) shares, each share to be expressed at the par value of Five Hundred Dollars (\$500), and all shares to participate equally in said trust;

Now, Therefore, the said Frank A. Hecht and Joseph M. Finn, do hereby declare that they now hold, and shall and will at all times hereafter hold, their joint interests as special partners in said firm, together with all of the profits, income and proceeds thereof, in trust, and to manage and dispose of the same in trust for the benefit of the holders, from time to time, of the certificates of shares issued hereunder for the equal benefit of all of said shares and in the manner and subject to the stipulations herein contained to-wit:

(1) The said trustees will collect in and receive all interest, distributable profits and other increments and income arising from other interests in said co-partnership, and as soon as received will apportion and distribute all such sums equally among and to said shares and pay the same over to the holders thereof, and in the event of a dissolution or winding up of said partnership, said trustees will distribute all moneys, property and effects that may come to their hands as soon as the same is or may be received by them among the said shares equally share and share alike.

(2) The said trustees shall have power to collect, sue for and receipt for all sums of money at any time due to said trust as interest, profits or otherwise; to employ counsel to begin, prosecute, defend and settle suits at law, in equity or otherwise; to pay and defray from the trust fund all expenses incurred in the operation of the business of said co-partnership or that may be required for the purpose of managing and carrying on the same, and to pay out of said trust fund all losses of every kind and nature sustained in said business or in any matter or thing arising in connection therewith.

(3) That all and singular the profits earned in said partnership business to which special partners are entitled shall be taken or drawn out of said business by said special partners twice a year to-wit: On April first and November first of each year, and promptly distributed among said beneficiaries.

(4) That each and every of the holders of certificates shall and may, at all reasonable times, without any interference, interruption or hindrance by said trustees or said general partners, have access to the books of account of said partnership, and shall, at least, 775 once in each year, be furnished by said trustees with a true, just and perfect inventory and account of all of the assets and property of said partnership and of all the profits and increase of said partnership and of all losses sustained in and about said partnership business and of all payments, receipts, disbursements and all other things by the said general partners made, received, disbursed, acted upon or suffered in said co-partnership business, and shall also, on or about the first day of each month during the term of said co-partnership, be furnished with a monthly trial balance of and pertaining to the accounts and conditions of said co-partnership business, as and when the same shall or may be furnished to said trustee by the general partners of said partnership.

The said trustees shall designate in writing such persons or firms to act as auditors of the business of said co-partnership and from time to time change such designation and designate other persons or firms as the holders of a majority of the outstanding shares shall, in writing, designate and require.

Should the auditor or firm of auditors designated by said shareholders under the provisions hereof, at any time certify in writing to the trustees or the shareholders that the business of said firm is not being conducted in a safe, conservative and judicious manner, or if said auditor or said firm of auditors shall certify that said Marcuse is neglecting said business or is incapacitated, and by reason thereof,

is not properly managing the business of said firm, then said certificate shall be, as between the said trustees and said shareholders, and as between said trustees and said general partners, conclusive and binding evidence of the facts therein recited and the said trustees shall, upon the written direction of the holders of a majority of said shares, cause all necessary steps to be taken to dissolve said firm.

(5) The holder or holders of said shares shall have no interest in said co-partnership and no right, title or interest in and to the property and assets of said co-partnership, but the interest of each and every shareholder shall consist solely of the right to receive from said trustees the moneys and property coming into the hands of said trustees and arising from the interest of said trustees as joint special partners in said partnership of Marcuse & Co., and that such right

776 shall be and be taken to be personal property and may be assigned and transferred as such subject to the limitations herein contained, and that in the case of the death of any shareholder hereunder during the existence of this trust, his or her right and interest hereunder shall pass to his or her executor or administrator, and not to his or her heirs-at-law, and that no shareholder now has, and no share holder hereunder shall at any time have, any right, title or interest in or to the property and assets of said partnership as such, it being the intention of this instrument to vest full, legal and equitable title to the property of said partnership in said trustees. No assignment of any interest hereunder shall be binding on the trustee until the original or a duplicate copy of the assignment is lodged with it. No assignee of any certificate shall, by virtue of such assignment, be entitled to any interest hereunder unless and until he shall have surrendered the certificate, together with the assignment thereof to the trustees and a new certificate or certificates shall have been issued to such assignee.

No shareholder shall have any right to institute any action at law or suit in equity for dissolution of said partnership or for any relief against said partnership or for the protection of the trust property or for the enforcement of any covenant hereof, or for any other remedy, unless the holders of a majority of the outstanding shares shall have made written request upon the trustees and shall have offered to the trustees reasonable opportunity either to proceed to take such action or institute such suit or proceeding in their own names for the benefit of all of the shareholders hereunder, nor unless also the holders of a majority of said shares requesting such action shall have offered to the trustees adequate security and indemnity against all costs, expenses and liabilities to be incurred therein or thereby, and such written request and indemnity of the holders of a majority of the shares are hereby declared in every such case at the option of the trustees to be conditions precedent to the execution of the powers and trusts hereby declared and of the powers and rights created under said partnership contract and to any action or cause of action, or for any remedy at law or in equity or otherwise; it being intended that no one or more of said shareholders shall have any right, in any manner whatever, to affect, disturb or prejudice the

said co-partnership contract or the operation of said co-partnership thereunder, except in the manner herein and in said co-partnership contract provided, and that all proceedings at law or in
 777 equity shall be instituted, had and maintained by the trustees in the manner and subject to the conditions herein and in said co-partnership contract provided and for the equal benefit of all of the shares.

(6) The trustees, in their collective capacity, shall be designated so far as practicable as the "Hecht-Finn Trust." As evidence of the ownership of said shares, the trustees shall cause to be issued to each shareholder a certificate or certificates which certificates shall be in form following, to-wit:

Certificate No. —.

Shares, —.

Hecht-Finn Trust (Not Incorporated).

Trustees' Certificate.

This certifies that ——— if the owner of — shares of the express value of Five Hundred Dollars (\$500) each of the Hecht-Finn Trust. This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a declaration of trust made by Frank A. Hecht and Joseph M. Finn dated the — day of June, A. D. 1917, under the provisions whereof, this certificate is issued to the same extent and in like manner and with the same force and effect as if said declaration of trust were fully and at length described herein.

The holder hereof has not, and shall at no time have, any claim or interest, legal or equitable, in the property owned by or belonging to said trust and described and referred to in said trust instrument, but only an interest in the net proceeds, profits and avails thereof as in said instrument provided.

This certificate is transferable only by assignment on the books of the undersigned trustees and surrender of this certificate, when a new certificate or certificates in exchange therefor will be issued to the person or persons named in said assignment. Dated, Chicago, —, 19—, —, —, Trustees.

(7) Said trustees shall not, by virtue of said trust or any of the terms and conditions hereof or any of the provisions of said co-partnership contract, or by virtue of anything arising hereunder
 778 or under said co-partnership contract, be or become personally liable on account of anything done or omitted to be done whatsoever, except only that each trustee shall be liable personally for his own wilful acts of wrong-doing. The trustees shall be entitled to reimbursement for all expenses, counsel fees, disbursements and charges incurred in and about the execution and performance of said trusts and the exercise and performance of their duties and powers hereunder and shall have a lien therefor upon the property of the trust paramount to the rights of the shareholders, and any per-

son or persons claiming by, through or under them. The trustees shall be protected in acting upon any notice, request, direction or consent or other instrument or paper by them believed to be genuine and to be properly executed.

(8) In the event of the death of either of said trustees, the survivor of said trustees shall forthwith succeed to all the rights, duties and obligations herein contained and to all of the right, title and interest of both trustees as special partners in such co-partnership, and shall act in the place and stead of both of such trustees with like force and effect as if such survivor trustee had originally been the sole trustee hereunder. In the event of the death of the surviving trustee, then the holders of a majority of said shares, by an instrument or concurrent instruments in writing, signed by such holders, shall designate a successor trustee acceptable to, and approved by, the general partners of said partnership and such successor trustee shall forthwith become the special partner in said co-partnership business in the place and stead of the deceased surviving trustee, and shall forthwith succeed to all of the rights, duties and obligations herein created, and shall set in the place and stead of the deceased surviving trustee with like force and effect as if originally the sole trustee hereunder.

In Witness Whereof, the said Frank A. Hecht and Joseph M. Finn, as trustees as aforesaid, have hereunto set their respective hands and seals this — day of —, A. D. 1917. — —, (Seal.) — —. (Seal.)

We, the undersigned, Ben Marcuse and L. H. Morris, general partners in the co-partnership of Marcuse & Co., do hereby acknowledge that we have read the foregoing instrument and are familiar with its contents and all of the terms, conditions and provisions thereof, and we hereby jointly and severally agree to do or cause to be done any and all acts and things, and to execute or cause to be executed any and all documents, writings and instruments necessary or proper in order to fully and effectually carry out the terms and provisions of the foregoing declaration of trust.

Witness our hands and seals this — day of —, A. D. 1917. — —, (Seal.) — —. (Seal.)

Mr. Miller:

Q. Referring to Zuncker Exhibit 37, which is the last document you identified, did you have any talk with Mr. Stein with reference to that document after he had sent it to you or delivered it?

A. I did.

Q. What did you tell Mr. Stein about it?

A. I told him that was more nearly an approach to the things I had indicated as indispensable, but that it didn't yet meet my views; that the first document had been short in that it didn't sharply define the fact that certificate holders had no interest whatever in the partnership or in its affairs, and were interested only in the profits after they had been segregated; that I wanted that sharp and clear;

that his first document didn't make that sharp and clear, and the second didn't make it sufficiently clear. I also told him that the idea of having Hecht and Finn act as trustees for these people, the certificate holders, as shown in the second document, wasn't satisfactory to me; that I wanted the Chicago Title & Trust Company to issue Trust certificates, if we bought any.

Q. Now, Colonel Buckingham, did you or your office, to your knowledge, then do anything in the way of preparing a draft of a trust agreement yourself?

A. I did. After this conversation with Mr. Stein, he suggested that I proceed to get one up myself that I thought would meet the requirements.

Q. Did you do that?

A. I did.

Q. Alone or in conjunction with someone in your office?

A. This was all in conjunction with Mr. Hoffman of my office and in consultation with Mr. Brown.

Q. Mr. Scott Brown?

A. Yes.

Q. Now, I show you a document, and I will ask you to look at that document and state if that is a draft of the document prepared in your office, and by that question I mean to exclude
780 all of the pencil or ink interlineations and the yellow sheet that is pinned on there. I refer simply to the white sheet and the typewriting on that white paper.

A. That was prepared by myself with the assistance of Mr. Richard Hoffman. I think on the 26th of June.

Q. The 26th of June?

A. Yes, sir.

Q. 1917?

A. 1917.

Q. Do you know whether that document was submitted to any other lawyer for examination and consideration?

A. Personally I didn't see any other lawyer consider it, except Mr. Hoffman, who took it after he and I had thrashed it out, and went to Mr.—started to go to Mr. Robertson's office.

Q. You mean Mr. Egbert Robertson?

A. Egbert Robertson.

Q. Who sits here. Now, did you see that document at a later date, before the final draft of the agreement was put into shape?

A. I did. Mr. Hoffman returned with this document which he had—after he had gone to this office, and there were certain interlineations in it, and there were certain papers attached to it, minor amendments to it, which he said was satisfactory to Mr. Robertson, and it was also satisfactory to Mr. Stein.

Q. Well, what would you say as to whether the document, as you now have it before you, and by that I now mean to include the document with certain portions stricken out, certain interlineations written in in longhand, and the yellow sheet of paper pinned onto it,—whether or not that is the condition the document was in when it finally came back to you?

A. Yes.

Q. As a result of these conferences?

A. Yes, sir. Mr. Hoffman showed it to me in that shape.

Mr. Miller: I offer this document in evidence as Zuncker Exhibit 38.

Mr. Platt: I won't take the time now to go through it.

Mr. Jacobson: We would like to examine it at greater length later.

Mr. Miller: Then I will go on with the examination.

(Whereupon said document was received in evidence, marked Zuncker Exhibit 38, and was and is in words and figures as follows, to-wit:)

781

Zuncker Ex. 38 J.

This Instrument made this — day of — —, A. D. 1917, Witnesseth that:

Whereas, certain Articles of Agreement, dated the — day of —, A. D. 1917, (a copy of which is hereto attached marked Exhibit "A" and made a part hereof with the same effect as if in the body hereof set forth in haec verba) have been entered into by and between Ben Marcuse and L. H. Morris, both of Chicago, Cook County, Illinois, as general partners, and Frank A. Hecht and Joseph M. Finn, also both of Chicago, Cook County, Illinois, as special partners, to engage, under the firm name of Marcuse & Co. in the brokerage business for a term of five (5) years beginning the 1st day of July, A. D. 1917; and

Whereas, under the terms and provisions of said Articles of Agreement, reference to which is hereby made, the undersigned, said Frank A. Hecht and said Joseph M. Finn, by reason of their relation to said firm as special partners are, and will from time to time become, entitled to certain payments and distributions of the copartnership assets and the income, interest and profits of and upon said assets; and

Whereas, the undersigned, Frank A. Hecht and Joseph M. Finn, jointly, as Trustees, hold all and every their right, title and interest in and to the assets and income, interest and profits of and upon the assets now or at any time belonging to said copartnership (which said assets and said income, interest and profits thereof and therefrom, to the extent of such their right, title and interest therein and thereto, are hereinafter for convenience sometimes referred to as Trust Fund) upon the trust and confidences hereinafter set forth;

Now, in consideration of the premises and in order to make certain said trusts and confidences, the undersigned Frank A. Hecht and Joseph M. Finn (hereinafter sometimes for convenience referred to as Trustees) declare that they jointly hold, and will at all times continue to hold, all and every said Trust Fund upon the trusts, confidences and conditions herein set forth, to-wit:

1. The Trustees direct the copartnership to pay and distribute, or cause to be paid and distributed, to Chicago Title and Trust Com-

pany, an Illinois corporation having its principal place of
 782 business in Chicago, Cook County, Illinois, (hereinafter for
 convenience sometimes referred to as Trust Company) for the
 account of The Hecht-Finn Trust, all and any part or parts of the
 Trust Fund becoming at any time, and from time to time, payable
 or distributable to the Trustees, by reason of the Articles of Agree-
 ment aforesaid, by way of distribution of contributed capital upon
 any dissolution or accounting of said special partnership.

2. Forthwith upon receipt thereof the Trust Company shall, after
 deducting therefrom its reasonable fees in that behalf, pay over and
 distribute among the registered holders of Trust Certificates, herein-
 after provided for, in the proportions in which their respective share-
 holdings stand to each other, said part or parts of the Trust Fund
 paid or distributed to it for the account of The Hecht-Finn Trust.
 The acceptance in writing by the Trust Company of the terms and
 provisions of this instrument, upon any executed original hereof,
 shall evidence its agreement and undertaking to carry out and com-
 ply with the provisions hereof applicable to it.

3. The Trustees shall cause to be executed and issued by the Trust
 Company Trust Certificates evidencing an aggregate of three hundred
 eighty (380) shares, each share to have, an initial value of Five
 Hundred Dollars (\$500) and all shares to be of equal and co-ordinate
 dignity and effect. Said Trust Certificates shall be substantially in
 words and figures as follows:

Certificate No. —.

— Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that — — is the owner of — shares of the
 initial value of Five Hundred Dollars (\$500) each of The Hecht-
 Finn Trust. This certificate and the interest represented thereby are
 subject to all the terms, conditions and limitations contained in a
 certain declaration of trust made by Frank A. Hecht and Joseph M.
 Finn, dated the — day of — A. D. 1917, under the provisions
 whereof this certificate is issued, to the same extent and in like
 manner, and with the same force and effect as if said declaration of
 trust were fully and at length herein set forth; and the registered

holder hereof shall be entitled from time to time to dis-
 783 tribution from said trust in the manner and upon the terms
 and conditions in said declaration of trust set forth; and by
 the acceptance of this certificate, the holder hereof accepts said
 agreement and becomes bound thereby, in the same manner as if he
 had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept
 by and at the office of the undersigned Trust Company by assignment

in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated, at Chicago, Illinois, this — day of —, A. D. —, Chicago Title and Trust Company, By — —, Its President. Attest: — —, Its Secretary.

The Trust Company shall keep a book of registry in which it shall enter over the signature of any of its officers thereto authorized the number and date of each Trust Certificate issued, the name and address of the person to whom it is issued and the number of shares evidenced thereby. Trust Certificates shall be transferable only upon surrender for cancellation and assignment in writing thereof by the registered holder thereof, and upon entry of the transfer in said book of registry, whereupon a new Certificate shall be issued to the transferee by the Trust Company. The Trust Company may in all cases make all payments and distributions to the registered holders of Trust Certificates at the addresses appearing upon its book of registry, and in making payments and distributions in accordance with the provisions of this paragraph the Trust Company shall be fully protected against all liability.

The original Trust Certificates shall be of even date herewith and shall be issued to the following persons for the number of shares set against their respective names:

Name.	Address.	Shares.
Frank A. Hecht		50
Joseph M. Finn		63
Rich'd Yates Hoffman	105 S. La Salle Street.....	100
Theodore Regensteiner		57
Henry Vette		60
Peter M. Zuecker		50

It is an express condition of the acceptance by the Trust Company of its undertakings hereunder that it shall not in any wise be held liable upon or by reason of the issuance of any Trust Certificate hereunder except for the proportionate share of the respective registered holders of the Certificates by it issued in and to the net part or parts of the Trust Fund actually received by the Trust Company, nor shall the Trust Company be under any obligation or duty to take any active steps to collect or enforce payment or delivery to it of any part of the Trust Fund.

4. Profits earned by said copartnership, to which the Trustees as special partners are entitled, shall be taken down or drawn out of

such business and paid and delivered over to the Trust Company at least twice a year, to-wit, on Feb. 1 and July 1, Aug. 1, of each year.

5. Each and every of the holders of Trust Certificates, themselves or by duly authorized agent, may at all reasonable times, without any interference, interruption or hindrance by the Trustees or by the general partners, have access to the books of account of said copartnership and shall, at least once a year be furnished by the Trustees with a true, just and perfect inventory and account of all of the assets of said copartnership and of all the interest, income, profits and increment of and upon the assets of said copartnership, and of all losses sustained and liabilities incurred in said copartnership business, and of all payments, receipts, disbursements and all other things by the said general partners made, received, disbursed, acted upon or suffered in said copartnership business, and shall also on or about the first day of each month during the term of said copartnership be furnished with a monthly trial balance of, and pertaining to, the accounts of said copartnership business as and when the same is obtained by the Trustees from the general partners.

785 The Trustees shall appoint, in writing, such persons or firms as they may select to act as auditors of the business of said copartnership. From time to time they may, and shall, revoke such appointments and appoint such other persons or firms as the holders of Certificates representing a majority of the outstanding shares shall in writing designate and require.

Should the auditors appointed under the provisions hereof at any time certify in writing to the Trustees or to the holders of Trust Certificates that the business of said copartnership is not being conducted in a safe, conservative or judicious manner, or if said auditors shall certify in writing that said Marcase is neglecting said business or is incapacitated and by reason thereof is not properly managing said business, then said auditors' certificate, as between the Trustees and the holders of Certificates, and as between the Trustees and the general partners, shall be conclusive and binding evidence of the facts therein recited and the Trustees shall, upon written direction of the holders of Certificates representing a majority of the outstanding shares, cause all proper, convenient and necessary steps to be taken to dissolve said copartnership.

6. The holders of Trust Certificates shall have no right, title or interest, directory, proprietary or otherwise, in the said copartnership or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto, both legal and equitable, being vested in the Trustees, nor shall the holders of trust certificates by the acceptance thereof be construed to have assumed any liability whatsoever with respect to said trust or said copartnership, but the interest of each and every holder of Trust Certificates shall consist solely of the right to receive from the Trust Company his proportionate share of the net part or parts of the Trust Fund from time to time actually received by the Trust Company, including the proportionate share of such holder of the corpus of said fund upon any dissolution of said copartnership, and such right shall be, and be

taken to be, personal property and may be assigned and transferred as such subject to the limitations herein and in said Trust Certificates set forth and contained.

7. No holder of any Trust Certificate shall have the right, either in his own name or otherwise, to institute any action at law or suit in equity for the dissolution of said copartnership, or for any relief against said copartnership, or to protect or enforce distribution of the Trust Fund or any part thereof, except as afore-
786 said provided, but all such actions or suits shall be brought and maintained by the Trustees; provided, however, that said Trustees shall be under no obligation or duty to commence or maintain any such action or suit unless thereto requested by holders of Trust Certificates representing a majority of the outstanding shares, and unless, also, the Trustees are reasonably indemnified by said Certificate holders, or any of them, against all costs, expenses and liabilities which may be incurred in and by said action or suit. In case said request be made and such indemnity be furnished as herein provided and said Trustees, within a reasonable time thereafter, refuse or neglect to begin or maintain said action or suit, then any one or more holders of Trust Certificates may begin and maintain such action or suit in the name of the Trustees, or otherwise, as the circumstances may require.

8. The Trustees shall not, by virtue hereof, or of any of the terms and conditions hereof, or of any of the Articles of Agreement creating said copartnership, be or become personally liable on account of anything done or omitted to be done, except only that each Trustee shall be liable personally for loss or damage resulting, directly or indirectly, from his own wilful or intentional acts or omissions to act. The Trustees shall be entitled to reimbursement for their reasonable expenses (including attorney's fees) and necessary and proper disbursements made in connection with the execution and administration of the Trust herein created and the exercise and performance of their duties and powers hereunder. They shall have a lien therefor upon the Trust Fund and the part or parts of the Trust Fund from time to time turned over to the Trust Company paramount to the rights of the holders of Certificates and to any person or persons claiming by, through or under such holders. The written requisition by the Trustees, or either of them, upon the Trust Company for reimbursement on account of such expenses and disbursements shall be prima facie evidence that said expenses and disbursements have been incurred and made and are reasonable and proper, and the Trust Company shall be protected in making reimbursement to said Trustees or either of them out of the part or parts of the Trust Fund from time to time received by the Trust Company on account of said expenses and disbursements. The Trustees shall be protected in acting upon any notice, request, direction, consent or other instrument or paper believed by them to be genuine and to be properly executed, provided such notice, request, direction, consent
787 or other instrument or paper be authorized or within the contemplation of this instrument or the Articles of Agreement creating the copartnership.

9. In the event of the death of either of the Trustees the survivor of the Trustees shall forthwith succeed to all the rights, duties and obligations herein contained and to all of the right, title and interest of both Trustees as special partners in said copartnership, and shall act in the place and stead of both of said Trustees with like force and effect as if such surviving Trustee had originally been the sole Trustee hereunder. In the event of the death of the surviving Trustee, then the holders of Certificates representing a majority of the shares, by an instrument or concurrent instruments in writing signed by such Certificate holders, shall designate a Successor Trustee acceptable to and approved by the general partners, and such Successor Trustee shall forthwith become the special partner in such copartnership business in the place and stead of the deceased surviving Trustee and shall forthwith succeed to all the rights, duties and obligations herein contained and to all of the right, title and interest of the original Trustees as such partners in such copartnership with like force and effect as if such appointed Trustee had originally been the sole Trustee hereunder.

In the event that Chicago Title and Trust Company shall resign as Trust Company hereunder a successor, which shall in every event be a corporate trustee authorized to, and doing, business in Chicago, Cook County, Illinois, shall be appointed as alternate or successor Trust Company by instrument or concurrent instruments in writing signed by holders of Certificates representing a majority of the outstanding shares. Such certificate or certificates of appointment shall be delivered to the Trustee or Trustees hereunder and shall become effective upon acceptance by the Successor Trust Company of the terms and provisions hereof relating to the Trust Company, whereupon such Successor Trust Company shall be under all the obligations or duties and shall have all immunities as if it had been originally appointed Trust Company hereunder.

Chicago Title and Trust Company may resign hereunder by signifying its desire so to do by certificate in writing delivered to the Trustee or Trustees acting hereunder. The Successor Trust
788 Company shall have all and the same rights of resignation under the same terms and provisions as herein provided for Chicago Title and Trust Company.

In Witness Whereof said Frank A. Hecht and said Joseph M. Finn have hereunto set their hands and seals this — day of — A. D. 1917. — (Seal.) — (Seal.)

STATE OF ILLINOIS,
County of Cook, ss:

I, —, a Notary Public in and for the County and State aforesaid, do hereby certify that Frank A. Hecht and Joseph M. Finn, personally known to me to be the same persons described in and who signed the above instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and

delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this — day of —, A. D. 1917. — —, Notary Public as Aforesaid.

We, the undersigned, Ben Marcuse and L. H. Morris, general partners, and Frank A. Hecht and Joseph M. Finn, special partners, in the firm of Marcuse & Co., do hereby acknowledge that we have read the foregoing instrument and are familiar with its contents and all of the terms, conditions and provision thereof and have assented thereto, and we, on behalf of said copartnership and as well individually, agree to do or cause to be done any and all acts and things, and to execute or cause to be executed any and all documents, writings and instruments necessary, proper or convenient to be done, caused to be done or executed in order fully and effectually to carry out the terms and provisions of said instrument.

Witness our hands and seals this — day of —, A. D. 1917.
 — —. (Seal.) — —. (Seal.) — —. (Seal.)
 — —. (Seal.) Individually and as Copartners under the Firm
 Name Marcuse & Co.

789 Chicago Title and Trust Company, in consideration of its appointment (however, subject to its right to resign and expressly conditioned upon its limited liability as in the above instrument provided) hereby accepts and agrees to undertake and carry out the terms and provisions of the above instrument relating to it as Trust Company; and its acceptance shall have all and the same full force and effect as if each of said terms and provisions were now and herein specifically set forth and agreed to. Chicago Title and Trust Company, by — —, Its President. Attest: — —, Its Secretary.

Mr. Miller:

Q. Colonel, after this document, Exhibit 38, had been prepared, the original draft of it, and as it was in progress of development, or when it was finally completed by the changes indicated on the fact of it, did you go over the document with Mr. Scott Brown?

A. I did.

Q. Did you have any conversation with Mr. Scott Brown in which you discussed with him the question of whether the Studebaker Brothers, or Hoffman, or the interests you were representing would, by the purchase of a certificate under this trust agreement, become members of the firm of Marcuse & Company?

A. Yes.

Mr. Jacobson: We object.

Mr. Platt: If your Honor please—

The Court: On what theory, Mr. Miller?

Mr. Miller: On this theory: As I understand the theory upon which the Court has been permitting all of this evidence, much of the evidence to go in that you have received over the objections I

have made, it is that you may go behind the face of the documents which were finally executed to ascertain what was the real intention of these parties. Now, if it is permissible for the other side to seek to show that, despite the documents, their intention was to become partners, even though the documents do not make them so, it is permissible for us to contradict that evidence and show that they had no idea of such a thing.

Now, I am going to be frank with the Court, because I owe
790 that to the Court. The proof that I am now tendering is not in harmony with the position which I have heretofore taken by the objections I have made, and I will say to your Honor frankly that under the law, as I understand it, that proof is not competent because none of the other was, but, for the purposes of this hearing, your Honor ruled against me on that, and you have allowed the evidence to be introduced on the other theory, and, therefore, without waiving any of my objections, I understand it is my privilege to meet that theory of the case and overthrow it by the proof, if I can.

The Court: Not by evidence of conversations among these gentlemen themselves. Sustained.

Mr. Platt: Did the witness answer the question?

Mr. Miller: No. I want to say just a word more to the Court. Intention is a fact to be proven like anything else, and, as I understand it, the real thing here, on the theory upon which this other evidence has gone in, is what was in the minds of those people. Now, we are not dealing with what they held out to or represented to other people. That is another question. I am dealing with the naked fact of intention. What did the men have in their minds, what were they seeking and intending to do; and there is no other way you can show that except to show the actual discussions that took place between them as they were working out and developing this thing, and what it was they were really trying to do. That is my thought about it. Now, I will take the ruling of the Court and move on.

The Court: Sustained.

Mr. Platt: I understand the witness answered. I move it be stricken out.

The Court: I didn't hear him answer.

Mr. Platt: The stenographer informs me he answered.

The Court: Colonel, I didn't hear you answer.

The Witness: Yes, I answered before there was any objection.

Mr. Miller: The question was did he have such a talk.

The Witness: Then asked me if I had a conversation, and I told him I did.

Mr. Platt: Did you have a conversation about this, that and the other. In other words, in the question——

The Court: Strike it out.

Mr. Platt: —In the question the substance of the conversation had been incorporated, so the answer "Yes" constitutes a statement.

791 Mr. Miller: I am not complaining in the line of your

Honor's ruling to striking it out, but my question was so framed as to only indicate the subject matter.

The Court: The subject matter of the conversation between the witness and——

Mr. Miller: And Mr. Scott Brown.

The Court: And advising counsel and the agents of the non-resident clients. That was the question.

Mr. Miller: The agent of the Studebaker Brothers Trust at that time.

The Court: The non-resident client twice removed. You have Brown——

Mr. Miller: Yes.

The Court: —and then the Studebakers, and beyond that you have Studebaker Brothers Trust, and it was the Studebaker Brothers Trust that the Colonel was the counsel for.

Mr. Miller: Yes, at that time. They made the investment.

The Court: Yes. Your question asks for talk between the Colonel and Brown.

Mr. Miller: Yes.

The Court: Whether upon a certain subject they had a talk.

Mr. Miller: Yes, sir.

The Court: He says they did.

Mr. Miller: Yes, sir.

The Court: What will do you any harm in that answer?

Mr. Platt: If your Honor will hear the question read, I think your Honor will find that the answer "Yes" says he did have a conversation in which that and that was said.

Mr. Miller: Let us have the question read because——

The Court: Read the question.

Mr. Miller: —I meant only to direct his attention to the subject matter.

(Question read.)

The Court: Now, they had a conversation, and your objection is to going into the conversation.

Mr. Platt: Yes, your Honor.

The Court: And the Court sustains your objection for the reasons already indicated.

Mr. Miller: I would like to make my offer of what I expect to show by the witness.

The Court: All right.

792 Mr. Miller: I offer to show that in that conversation between Mr. Scott Brown and Colonel Buckingham, Colonel Buckingham told him that the purchase of a trust certificate under this trust agreement by the Studebaker Brothers Trust would not make the Studebaker Brothers Trust, or either of the Studebakers, members of the firm of Marcuse & Company.

Mr. Platt: I object to that as incompetent.

The Court: Sustained.

Mr. Miller:

Q. Colonel Buckingham, were you ever on any occasion present anywhere at a meeting or conference which was attended by Messrs.

Vette, Zuncker, Regensteiner, Hecht and Finn and Marcuse, either with Mr. Stein present or absent?

A. Never.

Q. Were you present on the 30th of June, 1917, when delivery was made of the check of Studebaker Brothers Trust which has been introduced in evidence here?

A. I was not.

Q. Were you at the office of Marcuse & Company on June 30, 1917, at all?

A. I was not.

Mr. Miller: You may cross-examine the Colonel.

Mr. Platt: Will you give me those agreements of April 2nd.

Mr. Miller: You mean those contracts?

Mr. Platt: Of April 2nd.

The Court:

Q. Then, as I get it, Colonel, with the exception of that talk at that office with Marcuse, Hoffman and Brown, and your telephone talk with Stein, and your talk with him at the court house when you met him there on an occasion shortly after this original arrangement had had the objections from New York made against it, you had nothing whatever to do with any of these negotiations?

A. I had two conferences with Mr. Stein. I met him twice at the court house, Judge.

Q. With those exceptions, you had nothing whatever to do with these negotiations?

A. What negotiations do you mean?

Q. Any negotiations which finally led up to and resulted in this final agreement?

A. After April 2nd—

Q. After April 2nd.

793 A. —the only ones I had are the ones I have detailed here, and the only ones I know anything about.

The Court: Go ahead.

Cross-examination by Mr. Platt:

Q. Colonel Buckingham, about what time did you get back to the City after April 2, 1917?

A. I think it must have been about the 10th or 12th, Mr. Platt. I am not certain of that.

Q. Of April?

A. Yes.

Q. Now, without going into any details—I am trying to make this short, Colonel. Without going into any details, shortly after that you learned of the existence of these contracts, a copy of which has been offered in evidence as Zuncker Exhibit 1?

A. Yes.

Q. And I suppose at the same time you learned that your client held one of these instruments bearing Milton J. Foreman's signature in typewriting, dated April 3, 1917?

A. I think I saw a copy of one of those, Mr. Platt. I don't think I had any—

Q. I say you learned of their existence.

A. Yes, sir.

Q. So far as your clients were concerned, the situation remained unchanged until a time, which you identify as being early in May, when you had a conversation with Mr. Stein in which he told you that it was impossible to carry out that deal, in substance? I am not attempting to give the language.

A. Correct.

Q. Did not Mr. Stein at that time and in that connection refer to the telegram, of which I now hand you the original (handing document to witness)?

A. You are now talking about the May conference I had with him?

Q. I am talking about a conversation in connection with which you say Mr. Stein said it was impossible to carry through the deal.

A. Yes, that was in May.

Q. In May?

A. I think it was in May.

794 Q. In that conversation he alluded, did he not, to that telegram from Mr. Ely?

A. He referred to the subject matter of it. I wouldn't say he alluded to the telegram.

Q. Well, I do not mean—

A. But he referred to the subject matter with which we were both familiar, I think.

Q. Exactly. And it was in connection with Mr. Stein's conversation in that connection that the first statement was made that the old deal was off, is that right?

A. He said he was greatly disappointed, having done so much work, to have it all come to nothing.

Q. Exactly. Now, Colonel Buckingham, at what time had you drawn this trust in connection with the Studebaker Brothers Limited, as you describe it? That was before this?

A. The Studebaker Brothers Trust, you mean, Mr. Platt?

Q. The Studebaker Brothers Trust.

A. That was in 1916, as I now recall. The instrument will show.

Q. And that was your work?

A. Yes.

Q. Have you a copy of that agreement in court?

A. There is one in the room.

Q. Will you be kind enough to produce it?

A. I haven't it in my possession.

(Mr. Miller produces document.)

Mr. Platt:

Q. This is the agreement, or rather a printed and unexecuted copy of the instrument that you have designated as the Studebaker Brothers Trust Limited, is that right?

A. No, sir, Studebaker Brothers Trust.

Q. Unlimited?

A. I didn't say "unlimited."

Q. Well, that is a copy, is it?

A. That is a copy of the instrument under which Studebaker Brothers Trust was created.

Q. The original of which instrument is on deposit with the Chicago Title & Trust Company?

A. It is, I suppose it is.

Mr. Platt: I would like to have that marked in this case.

Mr. Miller: We will complete that by showing the signatures written out in full for you.

Mr. Platt: You are going to introduce that?

795 Mr. Miller: No, you are putting it in.

Mr. Platt: Oh, I understood—

Mr. Miller: I say we will complete it for you.

Mr. Platt: I would like to have that in evidence as part of the cross-examination.

Mr. Miller: What is it being marked?

Mr. Moses: Petitioners' Exhibit 36, as I recollect the last number.

Mr. Platt: Mark it Hecht Exhibit 1. That will be an easy way. (Whereupon said document was received in evidence, marked Hecht Exhibit 1, and was and is in words and figures as follows, to-wit:

Hecht Ex. 1 of 5/12/20. E. A. C.

Trust Agreement Creating Studebaker Bros. Trust.

Geo. M. Studebaker and Clement Studebaker, Jr., Grantors; Chicago Title and Trust Company of Chicago, Trustee; Scott Brown, Manager.

Dated March 1, 1916.

Defrees, Buckingham & Eaton, Attorneys, Chicago.

Trust Agreement.

This Instrument, or "Trust Agreement," dated the first day of March, A. D. 1916, by and between Geo. M. Studebaker and Clement Studebaker, Jr., both of South Bend, Indiana (hereinafter referred to as "Grantors"), Chicago Title and Trust Company, a corporation organized and existing under the laws of the State of Illinois, as Trustee (hereinafter referred to as "Trustee") and Scott Brown, of Chicago, Illinois (hereinafter referred to as "Manager"), Witnesseth:

796

Premises.

Whereas, Grantor, Geo. M. Studebaker, has concurrently with the execution of this instrument, delivered to Trustee certain money

and property owned by him, and valued at the time of said delivery, as shown by Schedule No. 1, hereinafter referred to;

Whereas, Grantor, Clement Studebaker, Jr., has likewise, concurrently with the execution of this instrument, delivered to Trustee certain money and property owned by him, and valued at the time of delivery, as shown by Schedule No. 2 hereinafter referred to;

Whereas, it is contemplated that each said Grantor may from time to time hereafter, deliver to Trustee other money and property then owned by him, and upon which shall be likewise in each instance placed a certain and definite value as of the time of such delivery; and

Whereas, it is desired by Grantors, by means of said property so delivered and so to be delivered to Trustee, to create and maintain a "trust fund," to be kept, maintained, used, and operated, for their use and benefit, and that the income arising from said "trust fund" shall inure to the use and benefit of Grantors, and that the corpus and principal of said "trust fund" shall be ultimately divided between and distributed to Grantors pro-rata to the respective contributions made by Grantors to said "trust fund;"

Grant.

Now, therefore, in consideration of the premises, and in further consideration of One Dollar (\$1.00) by each of the parties to each of the others paid, the receipt whereof by each of the parties is hereby acknowledged, the parties hereto have agreed, and do hereby agree, together, as follows, to wit:

That Grantor, Geo. M. Studebaker, has sold, assigned, transferred and set over, and does hereby sell, assign, transfer and set over, to said Chicago Title and Trust Company, as Trustee, all and singular the money and property mentioned and described in Schedule No. 1 (hereinafter referred to), and also all and singular the money and property of every kind and character, which Grantor may hereafter deliver to Trustee and which Trustee may hereafter receive, under this instrument;

That Grantor, Clement Studebaker, Jr., has likewise sold, assigned, transferred and set over, and does hereby likewise sell, assign, transfer and set over, to said Chicago Title and Trust Company, as Trustee, all and singular the money and property mentioned and described in Schedule No. 2 (hereinafter referred to) and also all and singular the money and property of every kind and character which Grantor may hereafter deliver to Trustee, and which Trustee may hereafter receive, under this instrument;

That Trustee has received, and does hereby acknowledge the receipt of, said money and property described in said Schedules 1 and 2;

That all said money and property, which has been so delivered to Trustee, and which may hereafter be delivered to Trustee, is so assigned, sold, transferred, set over and delivered by Grantors in trust, for the uses and purposes, and expressly subject to, all the

terms, conditions, and provisions in this instrument contained and set forth;

That said money and property is received by said Chicago Title and Trust Company, in trust, and Trustee hereby declares and agrees that it holds said money and property which it has so received, and will hold any and all money and property of every kind and character which it may hereafter receive under this instrument, together with any and all money and property of every kind and character for which the same or any of the same, may at any time be exchanged, or which may in any manner result from, or grow out of, the same (all of which money and property in the aggregate, being sometimes hereinafter referred to as the "Trust Fund"), for the uses and purposes, and expressly subject to, all the terms, conditions and provisions contained and set forth in this instrument, as follows, to wit:

Article I.

Objects.

The name of this trust shall be "Studebaker Bros. Trust."

Its object shall be to receive, acquire, purchase, own, hold, pledge, sell or otherwise dispose of, money and property of any and every kind and character, including shares of capital stock, bonds, notes and debentures and obligations of corporations; to participate in underwritings of issues of capital stock, bonds, debentures, notes and other corporate securities, and to make any contracts concerning the same; and generally to invest and to make such investments, from time to time, as the Directors hereinafter provided for, shall deem to be for the best interest of said "trust fund"; to make division from time to time of the income arising from said "trust fund," among Grantors, or under Grantors' respective direction; and at the termination of said trust, to distribute the principal and corpus of the "trust fund," to Grantors, or to those, who (by Grantors' direction respectively) are then entitled thereto.

Article II.

Trust Fund.

The original and initial contribution of Grantor, Geo. M. Studebaker, to the "trust fund" consists of money and property, described and valued, by Schedule No. 1.

The original and initial contribution of Grantor, Clement Studebaker, Jr., to the "trust fund," consists of money and property, described and valued by Schedule No. 2.

Both said Schedules No. 1 and No. 2 have been duly signed and executed by both Grantors, and by Trustee, and are attached to the duly executed copy of this Trust Agreement, now in posses-

sion of Trustee, and are hereby referred to and made part hereof, to the same effect as if included herein.

Each Grantor may, from time to time hereafter make further contributions to the "trust fund," of money or property owned by such Grantor, but only by and with the consent in writing of both Grantors and Trustee, upon the Schedule evidencing such contribution.

Said Schedules No. 1 and No. 2 are, and all subsequent schedules shall be, in form substantially as follows, to wit:

Schedule No. —.

Date: Dated at —, this — day of —, 19—.

Grantor: — —.

has this day at said time and place, delivered to Chicago Title and Trust Company, of Chicago, Illinois, as Trustee, to be received and held by it, under and in accordance with the terms of a certain Trust Agreement, bearing date as of March 1, 1916, by and between Geo. M. Studebaker and Clement Studebaker, Jr., as Grantors, said Chicago Title and Trust Company, as Trustee, and Scott

799 Brown, as Manager, the certain money and property, now owned by that Grantor first above named, and particularly described and valued, as follows:

Property and Value.

Items of property.	Value.
.....
.....
.....
.....
.....
.....
Total

Certificate: We, the undersigned, do hereby consent, agree, and certify that: the above described money and property was by Grantor first above named, duly delivered to, and received by, said Chicago Title and Trust Company, as Trustee, as above stated; and the said property, and each item thereof, is in our judgment, of the value above stated, which value we do hereby fix and place upon the same.

Executed in quadruplicate. — — (Seal), Owner of the Property Contributed under and Evidenced by This Schedule. Chicago Title and Trust Company (Seal), as Trustee, by — —, Attest: — —.

Each such subsequent contribution of money or property shall be evidenced by a schedule serially numbered, beginning with number 3, in form identical with said Schedules 1 and 2, and contain-

ing similarly the date, name of Grantor, the description of the money or property, the value placed on same, and the certificate agreement and consent signed by both Grantors and by Trustee; that the money and property described therein, may be made part of the trust fund, at the valuation shown by such certificate.

Each Grantor shall at all times be and be deemed to be, beneficially interested in said trust fund, in the proportion which the aggregate of the value of the money and property which he has contributed to the trust fund bears to the value of the money and property contributed by the other Grantor, as such values are fixed and shown by all said duly executed Schedules.

Schedules No. 1 and No. 2 have been, and each succeeding schedule shall be, executed in quadruplicate. One copy shall be retained by Trustee and shall be attached to the official executed copy of this instrument retained by Trustee; one copy shall be retained by that Grantor, making the contribution evidenced thereby; one copy shall be retained by the other Grantor herein; and one copy shall be retained by the Manager. In case of any controversy concerning any such schedule or any matter or fact shown thereby, the executed copy retained by Trustee shall control, and shall be final and conclusive on all parties. Every such schedule, hereafter so made and executed, is hereby made a part of this agreement, to the same extent, and with like effect, as if included herein.

For the purpose of:—

(a) fixing and determining the value which each Grantor contributed to the trust fund;

(b) fixing and determining the beneficial interest of each Grantor, proportionate to the beneficial interest of the other Grantor, in the trust fund and in the income and corpus thereof;

(c) fixing and determining the value which is at all times to be kept and maintained (in the contributed or other money and property), as the principal or corpus of the trust fund;

The valuation fixed and certified by each such duly executed schedule, shall be, and is hereby made, final and conclusive on all parties hereto.

Article III.

Powers and Duties of Trustee.

Trustee, as to any and all money and property of every kind and character, at any time held by it under this instrument in said trust fund, or due to it, or under its control, or to which as Trustee it is entitled or has any claim, shall have and possess full and complete power:—

(1) To receive and hold the same in its possession; to deposit the same with any Trust Company, Safe Deposit Company, or in any Bank; to claim, sue for, and recover, the same;

(2) To loan the same, with or without security;

- (3) To invest, reinvest, or exchange, the same, directly or indirectly, in, or into, any other money or property;
- 801 (4) To sell, transfer, assign, exchange or in any manner dispose of the same;
- (5) To pay any and all taxes or liens at any time legally levied or imposed upon the same;
- (6) To use and exercise any and every right of a holder of shares of capital stock, including the right to make any consents concerning, and to transfer, any said shares;
- (7) To borrow money, execute notes or other obligations, and to pledge any property to secure the payment thereof, as provided in Article VIII hereof;

(8) To receive and collect any and all income, increment, interest or earnings, on any funds or property in its hands;

(9) To deal with any money or property at any time a part of, or due to, said trust fund, in any and every way and manner, exactly and with like effect, as a natural person might lawfully do.

No purchaser, contractee, assignee or pledgee of any of such money or property shall be required to see to the application of any money or property paid or delivered to Trustee, or be obliged to see that the terms of this trust are complied with by Trustee, or be obliged to inquire into the necessity or expediency of any act of Trustee, or to inquire into any limitations or restrictions on the power or authority of Trustee.

Article IV.

Directors.

Except as otherwise herein expressly provided and limited, the business of this trust shall be managed, and the acts of Trustee shall be directed and controlled by, three (3) persons herein called and designated "Directors."

All the powers and duties of the three Directors, may be exercised by a majority of them, with the same effect as if all three had joined, except as herein otherwise expressly provided.

Every order executed in writing and signed by the Directors, directing any act to be done, within the provisions and limitations of this trust agreement, when delivered to Trustee shall be and constitute full and complete authority to Trustee to act as directed, concerning any money or property in or belonging to said trust fund.

Trustee shall not (except as herein otherwise authorized) take any action, or make any transaction, of purchase, sale, pledge, or otherwise, for the trust fund, or concerning any money or

802 property at any time in the trust fund, or belonging thereto, except only upon such written and signed order of Directors, provided that so long as any notes or instruments evidencing or securing indebtedness executed by Trustee under the provisions hereof, shall be outstanding and remain undischarged or unreleased, then so much of all money or property in the trust fund, as in the opinion of Trustee shall be necessary to pay and discharge such

indebtedness, with all interest accrued or to accrue thereon, may be retained by Trustee and set apart and applied by Trustee to the payment and cancellation of such indebtedness, with or without or notwithstanding any such written order of the Directors.

In the first instance Geo. M. Studebaker, Clement Studebaker, Jr., and Scott Brown shall be, and are hereby, appointed, such Directors.

In the event of the death, resignation or inability to act of said Geo. M. Studebaker, his son, Geo. M. Studebaker, Jr., is hereby appointed as director to fill such vacancy; in the event of the death, resignation or inability to act of Clement Studebaker, Jr., his son, Clement Studebaker III., is hereby appointed as director to fill such vacancy.

In case either said Geo. M. Studebaker, Jr., or Clement Studebaker III., shall fail to accept this appointment, or having accepted this appointment, shall thereafter die, resign or become unable to act, his successor shall be appointed by two-thirds in number of the persons, then receiving income of the trust fund, from and under that Grantor in whose lineal succession, the vacancy has thus occurred, but which appointment must also be signed and approved by Trustee.

In the event of the death, resignation or inability to act of said Scott Brown, his successor as Director shall be such person as shall be appointed by the other two then Directors.

All future appointments herein provided for, shall be made by written instrument signed by the persons appointing, and delivered to Trustee. All appointments shall be deemed to be effective, when the appointee has, in writing signed by him and delivered to the Trustee, accepted said appointment.

Directors, and each of them (except the Manager), shall have the right and power to act by attorney in fact, provided the written and signed authority of such attorney, is filed with Trustee. Such power of attorney shall not be acted on more than six (6) months after the date of its execution.

803 The Directors shall use their judgment and discretion and shall not be personally liable except for gross negligence, or actual and intentional breach of trust, and no Director shall be liable for the negligence, or breach of trust, of any other Director.

No Director, except only said Scott Brown, or his successor, shall receive any compensation for acting as such.

Article V.

Manager.

Said Directors shall open and maintain an office at Chicago, Illinois, for the transaction of the business relating to said trust fund, and Scott Brown, subject to the general supervision of the Directors, shall have the active management of said office as Manager and shall devote as much of his time and efforts to the business and affairs of said trust, as may be necessary.

He shall keep and preserve, in said office, complete books, records, and accounts, of the trust fund affairs, in which shall be

shown and accounted for, all money and property from time to time received into or constituting the trust fund, and all receipts, disbursements and transactions relating thereto, including copies of all orders made by Directors, and of all valuations from time to time made by Directors on the property at any time in the trust fund, and of all other documents or records pertaining to the business of the trust.

For his services as Manager (but not as Director) said Scott Brown shall be paid monthly, the sum of \$200.00, as one of the expenses of administering the trust.

The relation of said Scott Brown to Grantors and to said trust fund, is one of the utmost personal confidence, wherefore the compensation to be paid to any possible successor to him, as either Manager or Director, is not fixed by this instrument.

The other two then Directors shall have the right and power, at any time hereafter, to remove said Scott Brown as Manager and as Director, for gross negligence or breach of trust on his part; or without any reason whatever, at any time after March 1, 1922, by written instrument signed by them and filed with Trustee. Whereupon all right, power and authority of said Manager and Director hereunder shall immediately cease and determine.

Should said Scott Brown be removed (except for gross negligence or breach of trust on his part) he shall then be entitled to be paid as compensation for such removal, and

Trustee is hereby directed and authorized to pay out of said trust fund, and as a part of its operating expenses:

(1) If either Grantor is then alive, a sum equal to 20% of the whole amount which said Scott Brown has up to that time received as compensation under this "agreement";

(2) If neither Grantor is then alive, a sum equal to 50% of the whole amount which said Scott Brown has up to that time received as compensation under this "agreement," which said sum shall be paid in two equal annual installments.

Any such payment here provided for, in compensation for, and in the event of, such removal, shall be separate from, and additional to, any sum which said Manager shall theretofore have received hereunder.

In the event of such removal, said remaining Directors, shall have the right to appoint a successor as Director, and as Manager, to said Scott Brown, and to similarly remove such successor. The compensation of any such successor, for acting, or for removal, shall be fixed by the remaining then Directors, with the approval of Trustee.

Said Scott Brown joins in the execution of this instrument, for the purpose of signifying his asset thereto, and hereby agrees to devote so much of his time and attention, as may be necessary, during the life of this trust, to the said duties of Manager and of Director thereof.

Article VI.

Trustee.

Trustee shall be paid, its reasonable compensation for acting hereunder, which compensation shall form an expense under this trust agreement.

Trustee may resign at any time by giving sixty (60) days' notice of its intention so to do to the Directors. Said notice may be given by mailing a copy thereof to the office of said Directors and to the address of each Director, so far as the same shall be known to Trustee.

In case of resignation from office of Trustee, a successor in trust, which shall be a trust company in the City of Chicago, duly organized and authorized under the laws of the State of Illinois to administer trusts, shall be thereupon appointed by instrument in writing signed and acknowledged by said Directors and delivered to Trustee. Thereupon Trustee shall transfer and convey to such successor in trust, all the money and property in said trust fund, subject to any contract or contracts then outstanding for the sale of any of said property, but not including any property pledged, or necessarily held, to pay the debts or obligations of the trust fund.

Said successor in trust shall thereupon become and be vested with all the rights, privileges, powers and duties of Trustee named herein, to the same extent as if this instrument had in the first place been executed by and to such successor in trust as Trustee hereunder, and such successor in trust may in like manner resign and another Trustee may in like manner be appointed in its place.

Said Directors may at any time remove the Trustee acting at that time under this trust, and appoint a new Trustee in its stead. This may be done by a written instrument signed by all Directors, addressed to such Trustee. Thereupon like transfers and conveyances, as in the case of resignation of Trustee as aforesaid, shall be made by the Trustee then acting to the newly appointed Trustee.

Thereupon such new Trustee shall be vested with all the rights, privileges, powers and duties of Trustee named herein, to the same extent as if this instrument had in the first place been executed by said new Trustee hereunder, and in like manner a new Trustee may thereafter be appointed from time to time. Each such Trustee shall have the qualifications above provided.

If any suit or other legal proceeding shall be instituted wherein Trustee shall be made a party in any manner or capacity by reason of this trust, or of any act done under it, Trustee shall retain and hold from the trust fund money and property sufficient to reimburse it, for the expense incurred, including the reasonable fees of attorneys for services rendered in any such suit or proceeding. Nothing herein contained shall be construed as requiring Trustee to prosecute or defend any suit or legal proceeding brought as aforesaid.

said. Trustee may, however, and is hereby authorized to sue for and recover, in its own name, any money or property of any character at any time due to or a part of said trust fund. Trustee shall have no personal liability for anything done by it, under any of the provisions of this trust, except only for its gross negligence, or wilful and intentional breach of trust.

806

Article VII.

Expense.

In the conduct of said office, and in the business of the trust, the Directors shall have power and authority to employ such attorneys, counsel, clerks, employes and assistants, as they shall deem necessary, and to employ brokers and salesmen in their dealings with the trust fund, and with any and all money or property of any kind or description that may come into the hands of or control of the Trustee under this trust, and to pay for the services of all such counsel, attorneys, clerks, employes, brokers, salesmen and assistants such compensation out of said trust fund, as part of the operating expenses thereof, as said Directors shall deem reasonable and advisable.

Article VIII.

Loans.

Trustee may (when so directed by the Directors), borrow money, or incur indebtedness, for the uses and purposes of this trust. To evidence such indebtedness and interest thereon, Trustee may execute and issue notes or obligations in the name of "Studebaker Bros. Trust," which notes shall be signed by Trustee, in form as follows: "Studebaker Bros. Trust, By Chicago Title and Trust Company, Trustee," and each such note shall be and constitute an obligation and liability of said trust fund, and against all money and property therein. Every such note shall be payable, and shall be made payable, only from and out of the trust fund, and shall impose no obligation or liability on Trustee, or on Grantors, to pay such debt or note, except only from and out of said trust fund, and to the extent of the money and property in said trust fund.

Every such note and obligation shall by its terms and on its face definitely express or specifically refer to such limitation of liability. Trustee may secure the payment of the principal and interest of any such note or obligation, by delivering as a pledge, and pledging as collateral security, to such note, any property in said trust fund. Every such pledge agreement shall be made in the same name, and executed in the same manner.

Trustee may set aside and place at the absolute disposal of
807 Directors, money belonging to the trust fund, not exceeding at any one time ten per cent. of the total value shown by all the schedules filed up to that time and then held by it to represent

which money Trustee need not have in its possession or control any money or property, except only the receipt of Directors for said money.

Article IX.

Income.

The income arising from said trust fund (after paying and discharging the expenses of the trust herein provided) shall inure to the benefit of Grantors, and all distributions of income, shall be made to Grantors (or at their respective direction), in accordance with said duly executed Schedules at that time in existence, and pro rata to the values which at that time have been contributed by each Grantor, to the trust fund, as fixed and shown by all said Schedules.

The Directors may at any time and in their discretion, by such written order direct, and Trustee shall thereupon make, division and distribution among Grantors (or at their direction) of any then available income of the trust fund. "Income" as herein used, shall be deemed and defined to be any money or property of any kind, character or description, at any time in or belonging to the trust fund, which could be distributed and paid out by Trustee, and after which distribution there would still remain in the trust fund:

1. Money and property having an aggregate value, as fixed by the valuation placed by the Directors upon the same, last prior to such distribution, equal to the aggregate value as fixed and shown by all then duly executed schedules, evidencing all contributions to the trust fund; and also

2. Money and property, sufficient to fully meet and discharge all then indebtedness against the trust fund, and all interest thereon, and all expenses of the trust fund herein provided for, which have then been incurred.

During the life of this trust only income as above defined, shall be so divided and distributed, and there shall at all times remain, and be held in the trust fund, to be known, and hereby defined, as the "principal and corpus" thereof, money and property having a value (as fixed by the last valuation placed upon the same by the Directors) equal to the aggregate value fixed and shown by all schedules evidencing contributions to the trust fund.

The Directors shall have power to place a valuation, as of
808 any given time, upon the property then in the trust fund, and shall deliver to Trustee a certificate signed by them, fixing and showing such valuation, and Trustee shall be governed by such valuation in determining whether or not "income" exists.

It is hereby made the duty of the Trustee, notwithstanding any order of the Directors, to the contrary, to maintain the "principal and corpus" of the trust fund, as above defined, during the life of this trust.

Every division and distribution of income as above defined, and limited, may be made in money or property, as in the judgment of said Directors may be advisable, and upon such terms and in such

form and manner as to them may seem advisable. Any such division and distribution of income shall be made on the following basis:

A. During the life of this trust Trustee shall hold and maintain at all times in the "trust fund," its "principal and corpus," as above defined.

B. There shall be paid, or retained in the "trust fund," money and property sufficient to pay, all outstanding notes and obligations, and interest thereon, and all expenses of the trust, herein provided for, before any "income" is distributed.

C. After the requirements of the two preceding sections (A and B) have been complied with, any remaining money or property, shall be deemed "income," and available for distribution. Out of the same each Grantor (or his nominee) may receive a sum equal to, but not exceeding, at the rate of seven per cent. (7%) per annum upon the money value, fixed and shown by each duly executed Schedule evidencing a contribution made by him, from the date of the last income distribution, of (if none such has been made) from the date of such contribution, to the date of the instant distribution.

D. Any amount at any time distributed as income, over and above the amount necessary to comply with the requirement of the preceding section (C), shall be divided into three equal parts, and paid out and distributed as follows:

- (1) To Grantor, Geo. M. Studebaker, one-third.
- (2) To Grantor, Clement Studebaker, Jr., one-third.
- (3) To Scott Brown, one-third.

The amount so paid to Scott Brown, is in full compensation to him, for his services under this trust, and there shall be deducted therefrom the "salary" paid to him as Manager (under Article V preceding) during the period, since the last distribution of income, which deducted sum shall belong to the corpus of the trust fund.

Trustee in each such distribution shall distribute the income to which either Grantor is then entitled, to that Grantor in person, except that if that Grantor has, by one or more instruments in writing signed by him and delivered to Trustee, otherwise directed, as to all or any part of said income, then such distribution shall be made to the persons, in the proportions, and on the conditions, in all respects as is by Grantor directed, in and by the last dated of said instruments in writing, then in Trustee's hands.

At all times during the life of either Grantor, the said "income" distributable to that Grantor, and the right from time to time to direct or to change the distribution thereof to other persons, shall remain his own right and beneficial interest; and no direction made by him, to pay any income or any part thereof, to any person, shall be construed, or shall operate, to vest in such person any right or title to receive income, for any period of time longer, or beyond, the time limited by such direction, or to prevent or limit Grantor from thereafter changing, or making other or different direction concerning said income, or any part thereof.

Article X.

Term of Trust.

This trust shall terminate on March 1, 1922, provided either of Grantors shall notify Trustee in writing on or before January 1, 1922, of his desire to so terminate; and if Trustee shall then receive such written notice, this trust shall ipso facto terminate; but if no such notice of termination shall have been received by Trustee on or before January 1, 1922, then and in that event the trust shall be continued until, and shall terminate upon, March 1, 1942, if at that time Geo. M. Studebaker or his son, Geo. M. Studebaker, Jr., or if at that time Clement Studebaker, Jr., or his son, Clement Studebaker III, or his daughter, Esther Studebaker, or any one or more of them is alive, or has within ten (10) years theretofore been alive; and if none of them are then alive this trust shall terminate upon that date prior to March 1, 1942, which shall be ten (10) years after that date on which the last of the above named persons shall have died.

810

Article XI.

Distribution of Principal and Corpus.

Upon the termination of this trust, as above provided, the "principal and corpus" of the trust fund (that is, all money and property then held in the trust fund or belonging thereto after all the debts, obligations and expenses of the trust have been paid, and all net income has been distributed), shall be divided and distributed among and between Grantors, pro rata to the value of their respective contributions to the trust fund, as fixed and shown by the certificates evidencing all such contributions.

Trustee shall distribute such "principal and corpus" in kind as held by it, unless directed by the Board of Directors by an order signed by all Directors and delivered to Trustee, three (3) months before the termination of said trust, to sell said property and to distribute the money proceeds thereof, in which event Trustee shall accordingly sell said property to the best advantage at public or at private sale as it may deem best, and distribute the net money proceeds of such property instead of the property sold.

In the event any property is distributed in kind (as aforesaid) it shall be valued, and apportioned, for distribution by certificate signed by all the Directors and delivered to Trustee, and which shall be final and binding as to the respective values, and apportionments, as to all persons in distributive interest.

In the absence of such certificate of valuation and of apportionment, Trustee shall fix and determine such values, and such apportionment, for distribution, and the valuation and apportionment, made by Trustee shall be likewise final and binding upon all persons in distributive interest.

Trustee in making final distribution of the "principal and corpus" at the termination of this trust, shall distribute the money or the property to which each Grantor is then entitled, to that Grantor in person, except that if that Grantor has theretofore by one or more instruments in writing signed by him and delivered to Trustee, otherwise directed, then such final distribution shall be made by Trustee to the persons, in the proportions, on conditions, in all respects, as by that Grantor directed in and by the last dated of such written instruments, executed by him.

At all times during the life of either Grantor the right to ultimately, and at the end of the trust period, receive that part of the "principal and corpus" of the trust fund, to which that
811 Grantor is hereunder entitled, shall remain his own beneficial right, and interest; and no such direction by him, to Trustee, to pay or deliver any part of said "principal and corpus," to any person, at the termination of the trust, shall be deemed to vest any right or interest in such person, but every such direction shall, until the termination of the trust, remain subject to be changed by a subsequently dated direction of that Grantor.

Article XII.

Chicago Title and Trust Company joins in the execution of this instrument for the purpose of signifying its assent thereto and hereby agrees to accept and hold title under this trust and to make, execute and deliver from time to time all necessary and proper conveyances, assignments and instruments hereunder, according to the provisions of this instrument.

Prior to the termination of this trust and the final distribution of its principal and corpus, neither Grantor nor any one claiming under either Grantor, has any legal ownership of any money or property of any kind or description at any time in said trust fund, the legal title thereto and the ownership thereof being at all times in the Trustee alone.

In witness whereof, said Geo. M. Studebaker, Clement Studebaker, Jr., and Scott Brown have hereunto set their hands and seals, and said Chicago Title and Trust Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and attested by its Ass't Secretary as of the first day of March, 1916.
(Signed) George M. Studebaker. (Seal.) (Signed) Clement Studebaker, Jr. (Seal.) Witnesses to signature: (Signed) Geo. T. Buckingham. (Signed) Rich'd Yates Hoffman. Chicago Title and Trust Company, As Trustee, (Signed) by Wm. C. Niblack, Vice President. Attest: (Signed) H. J. Tansley, Ass't Secretary. Scott Brown. (Seal.) (Signed) (Corporate Seal of Chicago Title and Trust Company.)

812 STATE OF INDIANA,
 County of St. Joseph, ss:

I, Horace M. Kauffman, a Notary Public in and for the County and State aforesaid, do hereby certify that Geo. M. Studebaker, Clement Studebaker, Jr., and Scott Brown, personally known to me to be the persons named in and who subscribed the above and foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Witness my hand and notarial seal this 4th day of May, A. D. 1916. (Signed) Horace M. Kauffman, Notary Public in and for the County and State Aforesaid. (Notarial Seal.) My commission expires March 16, 1919.

STATE OF ILLINOIS,
 County of Cook, ss:

I, Martin J. Ahern, a Notary Public in and for the County and State aforesaid, do hereby certify that Wm. C. Niblack and H. J. Tansley, personally known to me to be the Vice President and Assistant Secretary of Chicago Title and Trust Company, a corporation, and who subscribed the above and foregoing instrument on behalf of said corporation, appeared before me this day in person and severally acknowledged that they signed and sealed the said instrument as the free and voluntary act of said corporation and as their own free and voluntary act for the uses and purposes therein set forth.

Witness my had and notarial seal this 15th day of June, A. D. 1916. (Signed) Martin J. Ahern, Notary Public in and for the County and State Aforesaid. (Notarial Seal.) My commission expires June 9th, 1920.

Mr. Platt:

Q. You, as I understand, suggested to Mr. Stein that what you denominated a Massachusetts Trust would be a good method of working out an arrangement under which this capital could be contributed so that it would ultimately go into the firm of Marcuse & Company, is that correct?

813 A. Substantially.

Q. By "Massachusetts Trust" you designated such a trust agreement as this Studebaker Brothers Trust?

A. I didn't.

Q. Well, is this a Massachusetts Trust, so that we may get your idea of a Massachusetts Trust?

A. No reference was made to that instrument at all, Mr. Platt.

Q. You misunderstood my question. I probably expressed myself very clumsily, Colonel. I say, when you spoke to Mr. Stein about a

Massachusetts Trust as being a method which could perhaps accomplish that which you gentlemen had in mind, you were alluding, were you, to such a trust agreement as the Studebaker Brothers Trust?

A. Oh, not necessarily.

Q. Do you consider the Studebaker Brothers Trust a Massachusetts trust within the meaning of that word as you used it in your conversation with Sydney Stein?

A. I have never given that subject any consideration, Mr. Platt to give it any designation.

Q. Well, when you spoke to Mr. Stein of creating a Massachusetts Trust—I am adopting now your words which you gave on direct examination—did you have in mind that the Studebaker Brothers Trust, for instance, was an example of a Massachusetts Trust?

A. I hadn't it in mind at all.

Q. What?

A. I hadn't it in mind at all.

Q. Well, so that I may get now your judgment, do you consider the Studebaker Brothers Trust a Massachusetts Trust?

A. I don't think that I would want to answer that question unqualifiedly.

Mr. Miller: Now, I object.

The Witness (continuing): I do not know that there is any such thing as a Massachusetts Trust, in the strict sense. That is a general sort of term that lawyers have applied to a kind of nebulous group of documents.

Mr. Miller: If your Honor please, Colonel Buckingham is relating a conversation—

The Court: I think, Mr. Miller, I want to know myself what that meant; what the Colonel meant in the conversation with Stein.

814 Mr. Miller: Very good; but, nevertheless, he is now dealing with the Studebaker Bros. Trust.

The Court: The Colonel said he drew that.

Mr. Miller: Yes; but how are we concerned with whether that is or is not a Massachusetts trust? If it is, it is a legal question for me to argue with you, or whoever presents our legal questions here.

The Court: Objection overruled.

Mr. Platt: Will you answer the question, Colonel, please?

The Witness: What is the question?

Mr. Platt: Read it.

(Question read.)

The Witness: I think I answered that.

Mr. Platt: What is the answer?

The Witness: I said, "Not necessarily."

Mr. Platt:

Q. Now, Colonel, I understand that over the telephone, talking with Sydney Stein—by the way, Sydney Stein is now dead?

A. Yes.

Q. Do you remember about when he died?

A. No, I do not, Mr. Platt.

Q. Well, he died not later—Well, he died within a year, did he not, after the formation of this Marcuse partnership?

A. Well, that is my impression.

Q. You used over the telephone language amounting something to this: That if he, Sydney Stein, would form a special partnership, and then would have a Massachusetts trust formed, so that contribution of Studebaker Brothers Trust to the capital of Marcuse & Company could be represented by a certificate which would go into the funds of the Studebaker Bros. Trust, you thought something could be worked out. I am not trying to give the exact language—

A. That isn't the exact language, nor the statement.

Q. —but the substance of what you testified to a few minutes ago.

A. That isn't the substance of what I testified to.

Q. What is that?

A. That isn't the substance of what I testified to.

Q. Now, Mr. Buckingham, did you use the words "Massachusetts Trust" in that telephone conversation with Mr. Sydney Stein?

A. I do not recall that I did in the telephone conversation. I reminded him at the conference we had on the 5th of June
815 that at a conference at the Union League Club, which was held sometime before that, and which I find, on looking at my time sheets, was the 26th of February, when he first talked about having a firm at all, that I had suggested that something in the form of a Massachusetts trust might be worked out, but nothing further had been said about it. I reminded him of that fact at this June 5th interview. That is what I think you have in mind. I think that is where you got the term "Massachusetts trust."

Q. At this June 5th interview you reminded him that some months before you had suggested the formation of a Massachusetts trust?

A. I had said that was a thing that might be worked out.

Q. In this same conversation didn't you allude to your desire to have a trust certificate that you could put into this Studebaker Bros. Trust?

A. Yes.

Q. That was at this talk with Sydney Stein?

A. That was the June 5th conference, yes, sir.

Q. Then my error was in speaking of it as a conversation over the telephone, instead of speaking of it as a conversation you had with him at the courthouse, is that correct?

A. Yes; except you said I spoke about a contribution to the firm of Marcuse & Company. I never said that.

Q. You never spoke about a contribution to the capital of the firm of Marcuse & Company?

A. I did not.

Q. Colonel, wasn't that the whole subject matter of your talk with Sydney Stein when you were speaking about whether you would give him \$50,000 or \$100,000?

A. Gave him fifty thousand? No, sir. It was whether or not my clients would contribute \$50,000 to enable that thing to get going, but I was especially particular that there be no contribution to the firm of Marcuse & Company from my clients. That is exactly what I was trying to make plain in this agreement.

Q. Colonel Buckingham, you and Sydney Stein were trying to devise a method by which \$50,000—he wanted a hundred thousand—of the property of the George M. and Clement Studebaker, Jr., either directly or through the interposition of the Studebaker Bros. trust, should be made available as capital for the business to be conducted under the name of Marcuse & Company, were you not?

A. Yes, ultimately.

816 Q. Well, you say "ultimately," Colonel. You didn't have any idea that there was going to be any considerable cessation of movement in the passage of that \$50,000 from the coffers of your clients to the till of Marcuse & Company, did you?

A. I don't know that I had any mental operation on this particular thing that you now mention.

Q. Did you and Sydney Stein have any discussion, at the courthouse or elsewhere, prior to the receipt of Zuncker Exhibit 36, as to what a Massachusetts trust was?

A. At the courthouse, no, sir.

Q. Or at any other place, prior to the delivery to you of Zuncker Exhibit 36?

A. No, I think not.

Q. You spoke in your direct examination of your having said to Sydney Stein that you didn't want any of your clients to assume the liability of a special partner.

A. I did.

Q. Did you have any discussion with Sydney Stein at that time as to what the liability of a special partner was?

A. I did not.

Q. What did you understand under the law of Illinois the liability of a special partner was at the time you had that talk with Sydney Stein?

A. It would depend upon the things that happened with respect to the special partnership. He wouldn't have any, unless some unforeseen thing took place. If a special partner went walking around the place, however, and talking to customers, or any other thing, some man might come along and say he was becoming a general partner by managing his business, and that sort of thing. Those were risks I didn't want anybody in my group to assume.

Q. Those were risks that wouldn't be assumed by any of your group, as you call them, unless they went in and did those things, is that right?

A. Quite right.

Q. Did you have any uneasiness in your mind about your ability to control your clients?

A. Why, I didn't want that risk assumed. I was against the idea of becoming a special partner in any partnership.

Q. Which of your clients did you have in mind as likely to go in there and walk around and talk to customers?

A. Well, Mr. Scott Brown might well have been in there. He sometimes traded in stocks with stock brokerage firms.

817 Q. Was he the man you had in mind?

A. I don't know that I had any particular man in mind. Mr. Platt. I had in mind the general risks of being a special partner, and I wanted to create a situation where the money we invested would not be that of a special partner.

Q. Colonel Buckingham, when you said to Sydney Stein that you didn't—I am using now what I think were your words on direct examination—that you wouldn't have any of "my clients"—Now, you using the words. I am speaking for you,—“any of my clients become special partners or assume such partner's liabilities,” whom did you mean by “any of my clients”?

A. Studebaker Bros. trust, Mr. Scott Brown, Mr. Richard Hoffman.

Q. You didn't have in mind that the Studebaker Bros. trust would walk over there to Marcuse & Company and stalk around and give orders, did you?

A. Mr. Scott Brown is the local representative of the Studebaker Bros. trust.

Q. George M. Studebaker and Clement Studebaker and Clement Studebaker, Jr., are the sole beneficiaries of the Studebaker Bros. trust, are they not?

A. No, I wouldn't say that.

Q. Who else is?

A. I couldn't tell you that offhand. The trust runs a good many years, and it would depend upon who died first, and various other elements, as to who are the beneficiaries. The title to the property is in the Chicago Title and Trust Company.

Q. At the time you are speaking of, when you were conducting this conversation with Mr. Stein, who were the sole beneficiaries of the Studebaker Bros. trust?

A. Of the capital, you mean?

Q. I mean the sole beneficiaries of the Studebaker Bros. trust.

A. That I can't—that can't be answered in that form, Mr. Platt. My impression now is that the interest and dividends that arose from trust went to George M. Studebaker and Clement Studebaker, Jr., and some portion to Mr. Scott Brown, and that the principal—

Q. The portion to Mr. Scott Brown was merely by way of compensation for his services, wasn't it?

A. By way of interest in the profits and proceeds. As to the principal—

Q. Now, Colonel—

818 Mr. Miller: May he finish his answer? He started to say something about the principal.

The Witness: As to the principal—I couldn't tell you this without examining the instrument—my present recollection is that that trust runs a good many years, and that the principal will go to whom ever it belongs, to at the time when the trust terminates. The trust

agreement is here, and I haven't recently examined it. That is only an impression of mine.

Mr. Platt: All right. In view of that statement, I won't cross-examine you on what you have just said.

Q. Now, Mr. Buckingham, did the instrument that you and Mr. Hoffman prepared—I am alluding now to so much of Zuncker Exhibit 38 as is embodied in the original typewriting—did that embody your idea of what you described to Mr. Stein as a Massachusetts trust?

A. I don't know that I made any designation of it, Mr. Platt.

Q. You used the words "Massachusetts trust" to Mr. Stein. I am asking you now whether that agreement that you formed, or that you drew, embodied what you intended to describe to Mr. Stein as a Massachusetts trust.

A. Well, I couldn't say whether it did or not. I didn't consider that question; as to just what I would describe it as.

Q. That is to say, if I understand you right, you suggested to Mr. Stein that a Massachusetts trust be formed, and thereafter you turned him over this instrument, but, as I understand you now, you are unable to say whether or not in this instrument you intended to carry out your suggestion that a Massachusetts trust be formed, is that correct?

A. No, sir, I didn't quite say that, Mr. Platt. What I said was that I reminded him that at a former meeting, which had occurred in February, I had suggested that something along the lines of a Massachusetts trust might be worked out, but that wasn't followed any further at the time, or any discussion of it made.

Q. Now, Colonel, in this instrument that you prepared you provided, did you not, that the certificate holders might at all times inspect the partnership books?

A. Yes, I think that is there, Mr. Platt.

Q. And you provided that they might on demand have full and true information of all the things affecting the partnership, did you not?

819 A. That is my impression. I haven't the instrument before me.

Q. You intended to provide that, did you not?

A. Yes.

Q. You intended to provide that under certain circumstances the certificate holders might direct the trustees to wind up the business, didn't you?

A. Yes.

Mr. Miller: Now, if the court please, can he cross-examine a witness as to the contents of a document in writing, which is here in court? The document shows what is in it.

Mr. Platt: I am asking him what he intended to provide.

Mr. Miller: But the document shows what is in it.

The Court: I understand it.

Mr. Miller: Now, I understand the rule to be that it is never permissible to ask a witness what is in a document when the document is here in court.

Mr. Platt: Counsel hasn't heard my question evidently.

The Court: This question about this document, having in mind the other testimony of the witness as to his talks with Stein, makes this question perfectly proper on cross-examination.

Mr. Miller: To ask him as to what is in a document?

The Court: Why certainly.

Mr. Miller: The document is here and shows what is in it.

Mr. Platt: Will you read the question to the witness, please?

(Question read.)

Mr. Miller: I object to it as improper and incompetent, and not proper cross-examination.

The Court: Objection overruled.

Mr. Platt:

Q. You intended to provide also in here, did you not, Mr. Buckingham, that all the profits which the special partners in Marcuse & Company should receive under the terms of the special partnership agreement should be divided pro rata among the holders of the so-called trust certificates in proportion to their contributions?

A. I intended to provide that whatever the special partners got as profits, after they got them, should be turned over to a trustee as a fund, and that when the trustee received them the trustee should divide them and distribute them to whoever held the certificates of interest in that fund.

Q. Now, Colonel Buckingham, in what respect do you differentiate between the answer you have just given and a straight, plain answer of "Yes" to my question?

A. The difference between your question and my answer, Mr. Platt.

Q. What do you understand that different to have been?

A. Why, your question implied that I expected the profits of this partnership to be turned over to these people. I didn't intend that at all. I intended that the special partners should get profits that were coming to them, and when they had received them and segregated them from the firm, then the interest, and not until then, and *then* they had been turned over — the outside trustee, the interest of the certificate holders should then attach. That is provided in Section 6 of this document.

Q. My question was if you didn't intend that all the profits payable to the special partners of Marcuse & Company should be divided among the certificate holders. Did you intend that result should be achieved?

A. I did not; not as profits, no, sir.

Q. You intended that the equivalent of every dollar in profits that was paid to the special partners should be promptly divided among the certificate holders, did you not?

A. Yes.

Q. Now, Colonel, did you mean just now to say that you intended

to provide in this that the profits should be turned over to the special partners and by them turned over to the trustee?

A. I don't know that I said those words, Mr. Platt.

Q. I think you said those exact words, Colonel.

A. I intended that whatever money, as profits, was coming to the special partners should go to the Chicago Title and Trust Company, as Trustee. I am not sure whether that was by payment to it by the special partners or by the firm.

Q. Colonel, don't you know you took very special pains in drafting this to provide that those profits should not ever go into the hands of Hecht and Finn, but should go directly to the Chicago Title and Trust Company?

A. I do not know whether I took special pains, but if it is there it is there.

Mr. Miller: I object to that.

Mr. Platt:

Q. You are a director of the Chicago Title and Trust Company, are you not, Colonel?

A. No, sir.

821 Q. Weren't you at that time?

A. No.

Q. Never have been?

A. Never have been.

Q. Now, the Chicago Title and Trust Company has been, in fact, always the trustee under the Studebaker Bros. Trust?

A. Yes.

Q. By the way, is any member of your firm a director of the Chicago Title and Trust Company?

A. I think not.

Q. Are you sure of that?

A. Fairly sure.

Q. Now, Colonel, you realized, did you not, that in securing to the certificate holders the right to inspect the books of the partnership, to demand information regarding it, under certain circumstances to have it dissolved and wound up, and the right to receive a pro rata share of the profit, was every single identical right preserved to a limited partner by the laws of Illinois? You knew that, didn't you?

A. No, sir.

Q. You didn't know that? What rights, under the laws of Illinois, would a special partner have, other than those which I have enumerated?

A. Well, the liabilities of a special partner are very much different than those of one who stands outside the partnership, Mr. Platt. I am not dealing so much with the respective rights, as I am with the respective liabilities.

Q. Colonel, if you will just be kind enough to pay attention to my question.

Will you read the last question to Colonel Buckingham, please?

(Question read.)

Mr. Platt: Now, read the question before, please.

(Question read.)

A. No, I did not.

Q. Now, Colonel, you didn't hear any question about liabilities in any of those questions, did you?

A. I did not.

Q. Why answer me about liabilities, then?

A. Because I am trying to make plain things you are asking me about, as to what I was trying to do with this document.

822 Q. I am asking you whether or not you weren't trying to secure every single right of a limited partner to your clients, and I am willing now to accept your statement that you were doing that, but also trying to prevent them from assuming any of the liabilities. Have I correctly described your state of mind?

A. I am not sure that you have.

Q. Now, Colonel, you received back this Exhibit 38 with the corrections and emendations that appear either upon the face of the document or upon the yellow sheet that is pinned to it, is that right?

A. It came back to me as shown to me, yes.

Q. And it is your understanding, is it not, that that was the basis of the document that was executed on the 30th of June, 1917?

A. It is my understanding that there was a fair copy made of that, and that it was executed. I didn't compare the copy, Mr. Platt, and there may be some minor differences. I am not sure, but that is my general understanding.

Q. Now, Colonel, Mr. Hoffman, as I understand it, is an associate member of your firm?

A. Yes, sir.

Q. And was in February, March, April, May and June, 1917?

A. Quite right.

Q. And was especially deputed by you to take charge of these matters in your absence?

A. Well, what matters do you mean?

Q. By "these matters," I mean the matters relating to the investment of some sum of money theretofore the property of Studebaker Bros, or the Studebaker Bros. Trust, in an enterprise which was going to enable Marcuse to carry on a brokerage business, is that correct?

A. Correct.

Q. Your mind is not sufficiently directed to the matters I am alluding to so that you can answer me intelligently?

A. As intelligently as I am capable.

Q. And in your absence in April Mr. Hoffman handled those affairs, did he not?

A. I assume that he did. I wasn't here.

823 Q. Now, Colonel, did you pick out Mr. Hoffman or did Mr. Hoffman pick himself out, as a member of the special partnership, tentatively at least entered into, and evidenced by Zuncker Exhibit 1?

A. Mr. Platt, I don't know.

Q. That answers it.

A. I wasn't in the negotiations that led up to that.

Q. Colonel, it was very shortly after you came back the 10th of April, 1917, that you learned of the existence of those instruments, was it not?

A. Of the existence of——

Q. Of the April 2nd contract?

A. Yes.

Q. Almost immediately, I presume?

A. A few days later. It was early in May however, before I talked to Mr. Stein concerning——

Q. It was after the 8th of May, surely?

A. (Continuing:) —concerning the falling down of this thing.

Q. Exactly.

A. Although I did talk to him during the interim.

Mr. Platt: That is all so far as I am concerned.

Cross-examination by Mr. Jacobson:

Q. Colonel Buckingham, did you intend in these papers that you drew to put Mr. Hecht or Mr. Finn in a more disadvantageous position as respects the business, than your own clients?

A. I intended to put my own clients entirely outside of any general partnership arrangement, general or special.

Q. Did you intend to prefer them as against Hecht & Finn?

A. I did not put Mr. Hecht or Mr. Finn in any position. I said to those gentlemen that if they got up a partnership that was satisfactory to me in its personnel and it issued these certificates under that kind of a trust arrangement, and segregated these profits, and took them entirely outside the partnership, my client would buy a \$50,000 certificate. I did not say that I wanted to put anybody in any advantageous or disadvantageous position, if that is what you mean.

Q. When you were negotiating with Stein you understood he was representing Mr. Marcuse, did you not?

A. He said he was representing Mr. Marcuse.

824 Q. There has been offered in evidence here as petitioner's Exhibit 1 a contract dated April 2nd, 1917. I think Mr. Platt interrogated you about it. Is that the contract of whose existence you learned, or the existence of which you learned shortly after May 10th?

A. I suppose it must have been.

Q. Please examine it.

A. I don't think I ever examined it at that time.

Q. Now, I show you what purports—what has been offered here as Petitioner's Exhibit 2, being a certificate concerning a special partnership that bears—has Mr. Richard Yates Hoffman's name there. Did you learn of the existence of that certificate at the same time?

A. I am not sure whether I ever heard of that or not.

Q. Will you look at it and see?

A. I never saw it at the time. I don't know whether I knew of it at that time or not.

Q. Do you know whose pencil notations appear to be on this certificate?

A. No, sir, I am not able to say that I do.

Mr. Jacobson: That is all.

Mr. Miller: Is everybody through with the Colonel, now?

Cross-examination by Mr. Moses:

Q. In connection with your talks with Mr. Stein, did he indicate to you whom else he represented besides Mr. Marcuse?

A. I am not sure that he did, Mr. Moses. He was accompanied by Mr. Marcuse on the occasion that he came to my office, and my first touch with him with respect to this very thing grew out of the fact that he was going around with Mr. Marcuse, advising him with reference to the Von Frantzius affairs.

Q. In the various negotiations that you had with him, did he undertake to speak for anyone else than Mr. Marcuse?

A. I did not hear him say anything about whom he spoke for, except that Mr. Marcuse was with him.

Mr. Miller: That is all, Colonel. Call Mr. Engstrom. Counsel wants to ask Mr. Engstrom a question ahead of me, and I consent to it.

825 EMIL O. ENGSTROM, resumed the stand and further testified as follows:

Mr. Jacobson:

Q. Mr. Engstrom, you are the same Emil O. Engstrom that has testified on this hearing before?

A. I am.

Q. Mr. Marcuse this morning testified that with respect to the first audit made of the books of Marcuse & Company, as of September 30th, 1917, that on or about January 1st, 1918, he delivered copies of the audit to you with instructions to mail them to Vette, Zunker, Regensteiner, Scott Brown, Hecht and Finn. Do you recall now whether you received such instructions, and what you did with respect to it?

A. No; I don't recall that. My impression is that none of the audits were mailed.

Q. Now, with respect to the audits, was there any other audit that was made after the first one?

A. Yes, there were two.

Q. Now, were any of those audits handed to any of those persons whose names I have just stated?

A. Not to my knowledge, or in my presence, with the exception possibly of a copy being given to the Studebaker Brothers trust.

Q. To what individual?

A. To, I think, Mr. Smith, P. L. Smith.

Q. P. L. Smith?

A. I believe so.

Q. Did you not state to me before Court met this afternoon that the second audit was delivered to each of those persons?

A. No, sir.

Mr. Miller: Can he impeach his own witness?

Mr. Jacobson: Yes.

The Court: Yes, all lawyers do it all the time, when they get something they don't like. Go ahead.

Mr. Jacobson:

Q. Let me refresh your recollection: Did you not state to me in this court room about 2:30 that the second audit was handed by Mr. Marcuse to Vette, Zuncker, Hecht, Finn, Regensteiner and Scott Brown,—delivered personally?

A. I stated that the audit was delivered to Mr. Marcuse, and my impression was that he gave a copy to each of the partners.

Q. Individually, in the office?

826 A. Individually, but not in my presence.

Mr. Jacobson: That is all.

Examination by Mr. Miller:

Q. You don't know, then, whether he did or not?

A. I don't know.

Q. So that, so far as you have any personal knowledge, these gentlemen named never saw or got copies of either the second or the third audit?

A. Not any direct knowledge.

Q. Now, the third audit never went out at all, did it?

A. It did not.

Q. Anyway, you never sent any copy of the second audit to Vette or Zuncker or Regensteiner, or Scott Brown?

A. No, I did not.

Mr. Miller: That is all.

Mr. Jacobson: That is all.

DAVID BLUMROSEN, called as a witness on behalf of the respondent, having been first duly sworn, testified as follows:

Direct examination by Mr. Miller:

Q. What is your name?

A. David Blumrosen.

Q. You live where?

A. 6910 Bennett avenue.

Mr. Moses: I have here the Clerk of the Court with those original files that I referred to this morning. I showed them to Mr. Platt. May I now offer them in evidence, if your Honor please, and then withdraw them and have copies made?

Mr. Platt: We don't think they are material, but they may go in, of course, subject to the objection as to materiality, and copies may be substituted.

The Court: All right.

Mr. Miller: That is in relation to the litigation in the Municipal Court, with relation to Morris, Marcuse, Hecht and Finn?

Mr. Moses: Yes. I want to offer in evidence statement of claim in case No. 690,404, Abraham Goldman against Benjamin Marcuse, Lou H. Morris, Frank A. Hecht, and Joseph M. Finn, doing business as Marcuse & Company, the summons in the case showing the return of service on Ben Marcuse, Joseph M. Finn and Lou H. Morris, Joseph M. Finn being served on the 24th of January, 1920, and the affidavit of summons filed by the firm of Stein, Mayer & David.

Mr. Platt: Whose affidavit?

Mr. Moses: Of Edwin B. Cowen, as duly authorized agent of the four; and in the case of E. S. Meyer vs. Ben Marcuse and the others, No. 850,714, the summons, running against the four, and showing service on Mr. Frank A. Hecht, Sr., on the 20th day of November, 1919; likewise the statement of claim in that action wherein the four are charged. There was no plea filed in that case.

The Court: Proceed.

Mr. Platt: Those cases are both disposed of, Mr. Moses.

Mr. Moses: One I think is pending. The other is disposed of.

Mr. Platt: Which is disposed of?

Mr. Moses: The one in which the affidavit of merit has been filed is pending. The other is disposed of by dismissal.

Mr. Miller:

Q. Do you live in Chicago?

A. I do.

Q. What is your profession?

A. Lawyer.

Q. What is your firm?

A. Foreman & Blumrosen.

Q. What was your firm in 1917?

A. Foreman, Robertson & Blumrosen.

Q. You have been in business, associated with Colonel Foreman ever since that time, have you?

A. Since 1912.

Q. Mr. Blumrosen, I show you eight contracts, documents marked Zuncker's Exhibits 1 to 8, both inclusive. Did you ever see those before?

A. I did.

Q. I show you also Zuncker's Exhibits 9 to 16, both inclusive. Did you ever see those before?

A. I did.

Q. When with reference to the last—oh, three or four months?

A. The only time I saw them was a number of weeks ago; it might have been almost two months ago, and the circumstances were these: I had been to lunch with Mr. Robertson and I asked him when it would be convenient—

Mr. Platt: One moment. I don't think conversations between Mr. Blumrosen and Mr. Robertson are competent.

Mr. Miller: There isn't a thing there that you would want to object to.

The Witness: It will take just a minute to tell how I saw them.

The Court: Well, you had your lunch and you came back to the office. What happened?

A. We started back to the office, and I asked Robertson—

Mr. Miller: Never mind the conversation.

A. We came back to the office, and Robertson went into our vault and selected these files and said, "Come up to the room I want to check these over with you." He then took these papers out of the files. That was the first time I had ever seen them, and he took a number of papers out of the files and said, "Yes, they check up all right," and then returned them to me, and we returned them, put them back into the vault.

Q. You say they were gotten out of the vault by you and Robertson. Out of whose vault?

A. Out of the vault in the office of Foreman & Blumrosen, 1150 First National Bank Building.

Q. Were the signatures torn off at that time, when you and Robertson examined them, as you find them now?

A. They were exactly in that condition.

Q. Do you know how and by whose hand these documents referred to as Zuncker's Exhibits 1 to 16, inclusive, came into my possession?

A. I do.

Q. Who brought them to me?

A. I brought them up to you with Colonel Foreman. I carried them and delivered them to you, and Colonel Foreman was with me. We delivered them to you, in your office.

Q. Was that since the pendency of this bankruptcy proceeding?

A. Yes, it was the day after I had seen them in Robertson's possession; that is, when he examined them.

Mr. Miller: That is all.

Mr. Platt: No cross-examination.

Mr. Jacobson: I would like to ask him a question.

The Court: Go ahead.

829 Cross-examination by Mr. Jacobson:

Q. The vault of Foreman, Robertson & Blumrosen in 1917 was located where?

A. 1150 First National Bank Building.

Q. And it is still there, is it?

A. Yes, sir.

Q. How many people have had access to that vault besides yourself?

A. Colonel Foreman and myself and the bookkeeper.

Q. Office employees?

A. And the office employees.

Q. And that has happened daily, that is, they have had daily access to that vault?

A. During the hours that the vault was opened.

Mr. Miller: If what counsel has in mind is that there may be some air of mystery about how those signatures were torn off, when I get through I will relieve him of that. It may shorten this by telling him that, and I am going to show exactly how those signatures were torn off, and by whom.

The Court: Call your next witness.

Mr. Miller: That was what you had in mind, wasn't it?

Mr. Jacobson: Yes.

Mr. Miller: I want the gentleman from the Chicago Title & Trust Company.

HENRY J. TANSLEY, called as a witness on behalf of the respondent, having been first duly sworn testified as follows:

Direct examination by Mr. Miller:

Q. What is your name?

A. Henry J. Tansley.

Q. Do you live in Chicago?

A. I do.

Q. What is your business?

A. Assistant Secretary, Chicago Title & Trust Company.

Q. How long have you been in that position?

A. About twelve years.

Q. Are you familiar in a general way with the so-called Hecht-Finn Trust?

A. Yes, sir.

830 Q. Have you in your possession any of the papers in connection with that trust?

A. I have.

Q. Have you in your possession a trust certificate bearing date the 30th—well, the first or second or third of July, or the 30th of June, whatever the case may be, made out to Theodore Regensteiner?

A. Yes, sir.

Q. I will ask you to look at what purports to be the signature and the attestation on behalf of the Chicago Title & Trust Company, and state whether or not that document was executed by the Chicago Title & Trust Company?

A. It was.

Q. Now, I call your attention to the assignment at the bottom of that document. Do you know the signature of Theodore Regensteiner? Can you testify to that, or must I show that elsewhere?

A. I cannot.

Mr. Miller: May be you gentleman can help me with a little good nature. Do you question that that assignment is Regensteiner's? I know you don't, Mr. Platt.

Mr. Jacobson: No, you need not prove it.

Mr. Miller: Do you want me to prove that, Mr. Jacobson?

Mr. Jacobson: No.

Mr. Miller:

Q. Do you know who wrote across the face of it the word "Cancelled," and across the signature? Do you know whose handwriting that is?

A. Yes, sir.

Q. Whose handwriting is it?

A. Mr. H. D. Pettibone of our office.

Q. Of the Chicago Title & Trust Company office?

A. Yes, sir.

Mr. Miller: I offer in evidence as Zuncker's Exhibit 39, the document which the witness has just referred to. Now, I don't mean by that the copy of other certificates attached to it, but I mean that Theodore Regensteiner certificate itself, No. 4, for 57 shares. We will supply a copy, and you gentlemen will permit the witness to take that back with him, with the understanding that we will have a copy of it made and supply it?

Mr. Jacobson: Yes.

Mr. Miller: I offer also as part of that document and Exhibit the Theodore Regensteiner assignment at the bottom of it.

S31 The document last referred to was admitted in evidence, marked Zuncker's Exhibit 39, and is as follows:

Zuncker Ex. 39.

Certificate No. Four.

57 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Theodore Regensteiner, is the owner of Fifty-seven shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain

declaration of trust made by Frank A. Hecht and Joseph Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect, as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

832 Dated at Chicago, Illinois, this 30th day of June, A. D. 1917. Chicago Title and Trust Company, By A. R. Marriott, Its Vice-President. Attest: R. W. Boddinhouse, Its Secretary. (Corporate Seal.)

Mr. Miller:

Q. I now show you a trust certificate No. 8, for 37 shares to Theodore Regensteiner, and will ask you to look at that and state if that document was executed by the Chicago Title & Trust Company?

A. Yes, sir; it was.

Q. And delivered?

A. Yes, sir.

Mr. Miller: I offer this document in evidence as Zuncker Exhibit 40.

The Court: That is his certificate?

Mr. Miller: That is the one he now holds, yes, sir.

Said document was admitted in evidence, marked Zuncker Exhibit 40, and is as follows:

Zuncker Ex. 40.

Certificate No. 8.

37 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Theodore Regensteiner is the owner of Thirty-seven shares of the Initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth; and the registered holder

hereof shall be entitled from time to time to distribution
833 from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 2nd day of July, A. D. 1917. Chicago Title and Trust Company, By J. A. Richardson, Its Vice-President. Attest: J. Frank Graf, Its Ass't Secretary. (Corporate Seal.)

Mr. Miller: I now show you another certificate, Numbered 7, for 20 shares, running to Mr. Israel Grollman, and I will ask you to look at that document and state if that document was executed by the Chicago Title & Trust Company?

A. Yes, sir.

Q. And delivered by it?

A. Yes, sir.

Mr. Miller: I offer this in evidence as Zuncker's Exhibit 41.

Said document was admitted in evidence, marked Zuncker Exhibit 41, and is as follows:

834

Zuncker Ex. 41.

Certificate No. 7.

20 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certifies that Israel Grollman is the owner of Twenty shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated, at Chicago, Illinois, this 2nd day of July, A. D. 1917. Chicago Title and Trust Company, By J. A. Richardson, Its Vice President. Attest: J. Frank Graf, Its Ass't Secretary. (Corporate Seal.)

835 Mr. Miller:

Q. Now, Mr. Witness, do you have in your possession a certificate made out to Richard Yates Hoffman?

A. Yes, sir.

Q. Will you please look at this certificate and state if that was executed by the Chicago Title & Trust Company?

A. It was.

Q. This certificate bears written across its face the word "Cancelled," and also the signature appears to be cancelled. Tell me in whose handwriting that cancellation is?

A. Mr. H. D. Pettibone.

Q. That is the gentleman you mentioned a little while ago?

A. Yes, sir.

Mr. Miller: I offer this in evidence as Zuncker's Exhibit 42.

Said document was admitted in evidence, marked Zuncker Exhibit 42, and is as follows:

Zuncker Ex. 42.

Certificate No. Nine.

100 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

(Written across face hereof: Canceled. Frank G. Gardner.)

This certifies that Rich'd Yates Hoffman is the owner of One Hundred (100) shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof this certificate is issued, to the same extent and in like manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representative in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to

the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 14th day of August A. D. 1917 Chicago Title and Trust Company, by A. R. Marriot, Its Vice President. Canceled. (Initials:) H. D. P. Attest: R. W. Boddington, Its Secretary. (Corporate Seal.) Certif. #9 in lieu.

Q. Do you have in your possession an assignment of this certificate?

Mr. Platt: So far as I am concerned, if you will just produce your papers and put them in, I will accept your statement without going through the form of putting the questions to him.

Mr. Miller: What do all the other gentlemen say?

Mr. Jacobson: We make the same suggestion.

Mr. Miller: Then I offer in evidence as Zuncker's Exhibit 43, an assignment by Richard Yates Hoffman of the certificate just introduced in evidence as Zuncker Exhibit 42, assigning that certificate and all of Hoffman's rights, title and interest, etc., to Frank G. Garner, and I ask that that be marked Zuncker Exhibit 43.

Mr. Jacobson: Will you describe who Frank G. Gardner is, and what his capacity is?

Mr. Miller: I am going to clean that all up before I get through.

The document last referred to was admitted in evidence, marked Zuncker Exhibit 43, and is as follows:

837

Zuncker Ex. 43.

The Hecht-Finn Trust.

Assignment of Certificate #3.

For Value Received, I hereby sell, transfer and assign unto Frank G. Gardner all my right, title and interest in and to the 100 shares of The Hecht-Finn Trust, evidenced by Trust Certificate No. 3, dated June 30th, 1917, issued by Chicago Title and Trust Company, of Chicago, Illinois, and I hereby constitute and appoint ——— my agent and attorney in fact, to cause transfer or said shares to be made upon the books of registry of Chicago Title and Trust Company, with full power of substitution and revocation in the premises.

Dated, this 2nd day of July, A. D. 1917. (Sgd.) Richard Yates Hoffman. In the presence of: (Sgd.) Don Kenneth Jones. (Sgd.) Stephen E. Burley.

Mr. Miller: I offer in evidence as Zuncker's Exhibit 44, a certificate numbered 9 for 100 shares, executed by the Chicago Title & Trust Company, and running to Frank G. Gardner.

The document last referred to was admitted in evidence, marked Zunker Exhibit 44, and is as follows:

Zunker Ex. 44.

Certificate No. Nine.

100 Shares.

The Hecht-Finn Trust (Not Incorporated).

Total Shares: 380.

Trust Certificate.

This certificate that Frank G. Gardner is the owner of one hundred (100) shares of the initial value of Five Hundred Dollars (\$500) each of The Hecht-Finn Trust.

This certificate and the interest represented thereby are subject to all the terms, conditions and limitations contained in a certain declaration of trust made by Frank A. Hecht and Joseph M. Finn, dated the 30th day of June, A. D. 1917, under the provisions whereof

838 this certificate is issued, to the same extent and in like manner, and with the same force and effect as if said declaration of trust were fully and at length herein set forth; and the registered holder hereof shall be entitled from time to time to distribution from said trust in the manner and upon the terms and conditions in said declaration of trust set forth; and by the acceptance of this certificate, the holder hereof accepts said agreement and becomes bound thereby in the same manner as if he had been named in and had executed the same.

This certificate is transferable only upon the book of registry kept by and at the office of the undersigned Trust Company by assignment in writing and upon surrender hereof for cancellation by the registered owner hereof or by his duly authorized representation in that behalf.

The undersigned Trust Company shall not be held in any wise liable upon or by reason of the issuance of this certificate except to the extent of the proportionate share of the registered holder hereof in and to net part or parts of the Trust Fund actually received by the undersigned for the account of The Hecht-Finn Trust.

This certificate is registered on the book kept by the undersigned for that purpose.

Dated at Chicago, Illinois, this 14th day of August, A. D. 1917. Chicago Title and Trust Company, (Signed) by A. R. Marriott, Vice President. Attest: (Signed) H. J. Tansley, Ass't Secretary. (Corporate Seal.)

Endorsed: (Signed) Frank G. Gardner.

Q. Mr. Tansley, I find endorsed on the back of the second sheet of that certificate, the name "Frank G. Gardner." Do you know Mr. Gardner?

A. Yes, sir.

Q. Who is he?

A. Treasurer of the Chicago Title & Trust Company.

Q. Do you know his handwriting?

A. I do.

Q. Is that the handwriting of Mr. Gardner?

A. It is.

Q. Are you familiar with what is known as Studebaker Brothers Trust?

839 A. Yes, sir.

Q. Tell us whether or not this certificate, which I have just introduced in evidence as Zuncker's Exhibit 44, is or is not held by the Chicago Title & Trust Company as a part of the assets of Studebaker Brothers Trust?

A. It is.

Q. Who gave you directions with reference to the Studebaker Bros. trust?

A. The directors of the trust.

Q. Who are they?

A. Mr. Scott Brown, Mr. George M. Studebaker, Mr. Clement Studebaker, Jr.

Q. And are the directions generally followed?

A. Always.

Q. Now, who arranged with you for the Hecht-Finn trust, do you know, what individual?

A. The Hecht-Finn trust arrangement was made with whom, personally?

Q. Do you know with whom that arrangement was made?

A. With Mr. Pettibone.

Q. Do you know by whom.

A. I do not.

Q. These certificates seem to bear date July 2nd, do you know what, in fact, the actual date was that these certificates were signed by the Chicago Title & Trust Company?

A. I thought they bore date June 13th.

Q. The assignment, now, just a minute, the certificate for one hundred shares, No. 9, being Zuncker's Exhibit No. 44, is dated July 2nd, 1914, do you know what the actual date was that that certificate was signed?

A. I do not.

Q. You have no idea that that is the correct date?

A. I have not.

Mr. Miller: That is all.

The Court: Call your next witness.

Mr. Miller: Now, I give you back these two certificates here, and would you please help us—

Mr. Platt: Mr. Miller, when making carbons of the evidence, will you have them make a carbon for me?

Mr. Miller: Will you do that, will you make several copies?

The Witness: Yes.

Mr. Miller: Just one more question.

Q. Mr. Tansley, I will ask you to look at Hecht's Exhibit No. 1, state whether or not this is a correct copy of the so-called
 840 Hecht-Finn trust agreement, which is on file with the Chicago Title and Trust Company, and concerning which you stated the terms, which were submitted to Scott Brown?

A. With the exception of a schedule which is not attached to this copy, and the signatures. Of course, there are no copies of signatures on this copy.

EGBERT ROBERTSON, a witness called on behalf of the respondents, having been first duly sworn, testified on oath as follows:

Direct examination by Mr. Miller:

Q. Please state your name.

A. Egbert Robertson.

Q. Do you live in Chicago?

A. Yes.

Q. What is your profession?

A. Lawyer.

Q. Are you now alone, or with a firm?

A. I am practicing alone now.

Q. Were you with a firm until recently?

A. Until about the first of January, 1919, I was a member of the firm of Foreman, Robertson & Blumrosen.

Q. Your offices were where?

A. 1150 First National Bank Building, Chicago.

Q. How long were you a member of the firm continuously previous to the date you have mentioned?

A. Under that firm name from January 1st, 1916. Prior to that the firm was Foreman, Levin & Robertson, since 1911.

Q. Do you know Peter M. Zuckner?

A. I do.

Q. And Henry Vette?

A. I do.

Q. Were they clients of the offices of Foreman, Robertson & Blumrosen in 1917?

A. Yes, they were.

Q. Did you represent them to any extent, or in any manner, in anything which took place relative to or in connection with the organization of a firm to be known as Marcuse & Company in 1917?

A. We did.

841 Q. Did you have anything to do personally with them?

A. Yes.

Q. About when did the matter, or did your immediate or personal connection with it begin?

A. About the 26th of March, 1917.

Q. Was Colonel Foreman active in the office at that time?

A. Yes, he was. My connection with it was merely advisory, and in general going over matters with Colonel Foreman from March

26th up till April 2nd, up to the time of the execution of the first partnership agreement.

Q. Were you present at that conference on April 2nd?

A. I may have been casually in the room, I may have been.

Q. Did there come a time when Colonel Foreman turned this matter over to you to look after?

A. There did, yes.

Q. As near as you can recollect, when was that?

A. It was on the 18th day of June, 1917.

Q. At or about that time, did you meet Mr. Sidney Stein?

A. On the 20th I met Mr. Stein, June 20th.

Q. Did Mr. Stein submit or turn over to you, at or about that time, a draft of an agreement?

A. Either Mr. Stein did or Colonel Foreman. They handed me on the 18th or 19th the draft of an agreement which supposedly came originally from Mr. Stein.

Mr. Miller: With counsel's permission, your Honor, I am going to use the same copy that I exhibited to Colonel Buckingham, rather than to take out of my files the other set, the duplicates of these, and encumber the record with them.

Q. I hand you two instruments and ask you if you can tell whether either of those instruments is a copy of the one that was submitted to you, or must you see the copy from your own?

A. Well, I should not be able to testify positively that these are copies, and the second one has identification marks in my own handwriting. Perhaps you had better show me those.

Mr. Miller: Maybe I had better show him those, although I do not think it will be necessary to introduce these copies in evidence. At least, I will avoid that, if I can. Unless other counsel want that, I will pass on to others.

Q. Do you remember that he did submit to you a draft of a so-called trust agreement?

A. Yes, two separate drafts between the 18th of June and the 27th of June.

842 Q. Did you make an examination of them?

A. Of the second one I did.

Q. Did you have any talk with Stein afterwards as to whether or not these drafts, or either of them, were satisfactory to you?

A. I never made any statement of the conclusion on that subject to Mr. Stein, because the conversation with him on June 27th made it unnecessary to do so.

Q. What was that conversation on June 27th?

Mr. Platt: This goes in subject to the same objection.

A. Mr. Stein advised me that Defrees, Buckingham & Eaton had refused to accept the second draft which I then had, and had partly modified, and that Mr. Hoffman, he said, was preparing another draft of the instrument, which he hoped to have there during the day,

whereupon I ceased to make any further examination or correction of the second draft which Mr. Stein had submitted.

Q. Had you previous to that time worked out any corrections or modifications of the document or documents submitted to you by Mr. Stein?

A. As to the second draft, yes, I had.

Q. Was the second draft submitted to you by Mr. Stein in lieu of the first one that he handed you?

A. It was.

Q. Now, let me ask you, did there come to you, subsequent to that talk with Mr. Stein which you have just referred to, a draft of an agreement from the office of Defrees, Buckingham & Eaton?

A. Yes.

Q. I show you now Zuncker's Exhibit No. 38, and I will ask you to look at that document and state if that is the document which came to you from the office of Defrees, Buckingham & Eaton?

A. It was not in its present form, however, but in the typewritten form, upon the original white paper.

Q. By my question I mean the white paper with the blue or green paper—that is blue, isn't it?

A. Blue, I guess.

Q. Blue typewriting. Now, I find—did you go over that document?

A. Yes.

Q. Did you make any changes in it?

A. Yes, I did.

Q. I find, in looking at the document that paragraphs or
843 some other portions have been stricken out, and there are some longhand interlineations made there.

Mr. Jacobson: By "stricken out," you mean a line drawn through?

Mr. Miller: Yes, that is what I mean, line drawn through.

Q. Do you know who made that?

A. Yes.

Q. Who?

A. I did.

Q. I also find pinned to—I find pinned to one of the sheets a piece of yellow paper with some typewritten on it. Who prepared that?

A. I dictated that, had it written in the office and pinned it on the page where it appears now.

Q. Did you go over, or work with anybody in going over and revising that draft?

A. I made the first examination of it, and perhaps a partial revision of it alone, on the evening of June 27th. On June 28th Mr. Hoffman and I went over it in conference and discussed the various questions which arose under it and various suggestions for modifications which I had made.

Q. Now, after you and Mr. Hoffman had completed your revision of the document, did you alone, or you and Mr. Hoffman together, take the document up with any other lawyer before the final document was written out?

A. Mr. Hoffman told me he was to take it up with Colonel Buckingham, left the office with him, as I recall it.

Q. What I particularly have in mind is whether or not you, or you and Mr. Hoffman together, went over the document together with Mr. Sydney Stein?

A. We saw Mr. Stein and delivered the document to him later in the day, as I recall it, or on the morning of the 29th, and called his attention to the suggestions for modification which had been made in it.

Q. To whom was left the task of rewriting that document and putting it in the final form for signature?

A. So far as I know, Mr. Stein attended to that.

Q. Was there a meeting in the office of Colonel Foreman—By that I mean his firm offices—at any time in May, attended by yourself, Colonel Foreman, Messrs. Hecht, Finn, Marcuse, Scott Brown, Regensteiner, Vette, Zunker, and Sydney Stein, at which, or during which, Mr. Marcuse, stated to the general assembly reasons why
844 a partnership arrangement which had been evidenced by a contract signed on April 2nd in Foreman's office could not go through, and that Messrs. Hecht and Finn had consented to act as special partners to represent all of the other gentlemen, namely, Brown, or the Studebakers, Hoffman, Vette, Zunker and Regensteiner?

A. No such meeting ever took place that I knew anything about.

Whereupon an adjournment was taken until five o'clock P. M., May 13, 1920.

In the Matter of MARCUSE & COMPANY, Bankrupts.

Landis, J.

Thursday, May 13, 1920—5 o'clock p. m.

Court met pursuant to adjournment.

Present: Same as before.

EGBERT ROBERTSON resumed the stand, was further examined by Mr. Miller, and testified as follows:

Q. Mr. Robertson, did there at any time after the 2nd of April, 1917, take place in the office of Foreman, Robertson & Blumrosen a meeting attended by Messrs. Marcuse, Morris, Hecht and Finn, Sydney Stein, yourself, Mr. Regensteiner, Mr. Vette, Mr. Zunker, and Mr. Hoffman, either with Scott Brown present or absent, or a meeting at which substantially all of those gentlemen were present, at which meeting either Mr. Sydney Stein or Mr. Marcuse explained to the gentlemen present the position taken by the New York Stock

Exchange and why the contract of April 2, 1917, could not be—by that I mean the one signed in Foreman's office on that date—could not take effect, and in which either Marcuse or Stein explained to the meeting that Mr. Hecht and Mr. Finn had consented to act as special partners in the firm of Marcuse & Company for all of the rest of the gentlemen, or in substance anything of that kind?

845 A. No such meeting as you describe ever took place at which I was present, or knew anything about, or had any knowledge of.

Mr. Miller: My recollection is, your Honor, and I appeal to you to verify it, that when I had him on the stand yesterday I went over with him the draft of the trust agreement prepared in Colonel Buckingham's office and submitted it to him, and which bears his interlineations and changes.

The Court: Yes.

Mr. Gesas: That is correct.

Mr. Miller: You do verify that for me. Thank you, gentlemen.

Q. Now, do you remember whether or not while that document was in your hands and in process of being worked on by you, either alone or in conjunction with Mr. Hoffman, Mr. Louis Grollman went over the document with you or examined it at all?

A. Mr. Grollman saw it on the 29th of June, after Mr. Hoffman and I had completed a revision of it, and he may have taken it to his office with him, or, at any rate, he went over it or saw it and announced after examination that he approved of the form.

Q. Do you know who of the group of gentlemen Mr. Grollman was representing?

A. Yes, he was representing Mr. Regensteiner.

Q. I show you Petitioners' Exhibit 8, which is the check of Henry Vette, and also Petitioners' Exhibit 9, the check of P. M. Zunker, and I ask you if you ever saw those checks before?

A. I did.

Q. Were they ever in your possession?

A. Yes, sir.

Q. When with reference to the date they bear?

A. They were in my possession on that date. They may have been in my possession the evening of the 29th, although I am not certain as to that.

Q. From whom did you get them?

A. Either directly or through a messenger from Mr. Zunker.

Q. Were you present at the office of Marcuse & Company on the 30th of June, 1917?

A. I was.

Q. For whom did you go there?

A. Messrs. Vette and Zunker.

846 Q. Did you have with you these two checks?

A. I did.

Q. Who did you meet there?

A. Mr. Marcuse was there, Mr. Stein, Mr. Hoffman, one or two men in the office—Mr. Engstrom I think was in and out, and perhaps one or two of the other men. Mr. Grollman came in. Mr. Finn and Mr. Hecht.

Q. Was Scott Brown there?

A. No, he was not.

Q. Colonel Foreman?

A. No.

Q. Colonel Buckingham?

A. No.

Q. Mr. Regensteiner?

A. No.

Q. Mr. Vette or Mr. Zuncker?

A. No.

Q. Did you have with you, or was there present on that occasion the draft of the trust agreement which is in evidence as Zuncker Exhibit 38?

A. I did. I think I had it—I think I brought it over with me.

Q. Did you see there on that occasion the finished or completed copies of that Hecht-Finn trust agreement?

A. Yes, it was there.

Q. What, if anything, did you, or you in conjunction with anybody else, do relative to examining the finished document, that is, the document that was for signature?

A. Mr. Hoffman and I compared the finished document with this draft before its execution.

Q. Do you remember whether on that occasion you saw the original partnership agreement between Messrs. Marcuse, Morris, Hecht and Finn?

A. Yes, I think it was there.

Q. Had it been executed when you saw it?

A. I do not recall whether it had been signed before I came in, or whether it was signed while I was there. It was there signed before I left the conference at the office that day.

Q. Do you recall whether the Hecht-Finn trust agreement had been signed at the time you examined it, or was signed subsequently?

A. I think it was signed subsequently. I think I examined it before its execution.

847 Mr. Gesas: What was the last?

The Witness: I think I examined it before its execution.

Mr. Miller:

Q. If the partnership agreement had not been signed before you examined it on that day, was it signed on that occasion?

A. It was.

Q. Was the Hecht-Finn trust signed on that occasion?

A. It was.

Q. What, if anything, did you do with the Vette and Zuncker checks?

A. I gave them to Mr. Finn or Mr. Hecht. I think to Mr. Hecht in the presence of Mr. Finn.

Q. Did you take any steps at that time with reference to procuring for Mr. Zuncker and Mr. Vette their trust certificates?

A. Yes.

Q. What did you do?

A. I telephoned the Chicago Title & Trust Company; called first for Mr. Harry Tansley; told him about the circumstance that the trust indenture had been signed that morning and my recollection is that I started to make a request of him, and he told me that Mr. Pettibone was handling the matter for the Chicago Title & Trust Company, and that he was not, as I had assumed. He transferred me to Mr. Pettibone on the same wire, and I told Mr. Pettibone about the circumstances, and that I would like to have the certificates executed and get them, and they were about to close. It was then very near the closing hour, and he suggested that—or I suggested—I do not remember which—in the course of the discussion that it would be difficult to get them delivered that day; that I would take his telephone assurance that the certificates would be executed as of that day, and that I could get them on Monday.

Q. Did you get them on Monday?

A. I did.

Q. Mr. Robertson, did you make any request of anybody, either before or at the time or after you delivered those two checks?

A. With reference to what, Mr. Miller?

Q. With reference to holding the Zuncker check for any length of time before it was deposited?

A. Nothing whatever was said on that subject.

Q. Did you procure from the Chicago Title & Trust Company on the following Monday the Vette certificates?

848 A. Yes.

Q. Were those certificates sent to Mr. Zuncker and Mr. Vette by you?

A. They were both sent to Mr. Zuncker by me in a letter.

Q. Let me ask you who, as between Mr. Zuncker and Mr. Vette, did you meet in connection with this matter and do your business with?

A. Mr. Zuncker.

Q. Did he assume in those negotiations or in his talks with you to speak for himself and Mr. Vette both?

A. He did.

Q. I show you Zuncker Exhibits, 1 to 8 both inclusive, and Zuncker Exhibits 9 to 16, both inclusive, and call your attention to the fact that the signatures are torn or partially torn from those documents. Do you — when and by whom those signatures were torn off?

A. Yes.

Q. When with reference to the 30th of June, 1917?

A. It was after the 30th of June, 1917?

Q. I beg pardon?

A. It was after the 30th of June, 1917.

Q. About how long after?

A. It was after the 3rd of July and before the 20th of July, and I think it was on the 11th of July.

Q. Where were those signatures torn off?

A. Either in my room in the office of Foreman, Robertson & Blumrosen, or in Mr. Stein's private office in the office of his firm.

Q. Do you mean Mr. Sydney Stein?

A. Yes.

A. From what source were those documents procured by you, if you did procure them for that purpose?

A. From our files; files of Foreman, Robertson & Blumrosen.

Q. By whom were the signatures torn off?

A. Mr. Stein and I together.

Q. Mr. Robertson, did you either at the time these checks were delivered to you or previous thereto have any talk with Mr. Zuncker with reference to this trust agreement?

A. I did.

Q. Did you explain to Mr. Zuncker the nature and character of that trust agreement?

Mr. Platt: Well, I do not think conversations between Mr. Robertson and his client, Mr. Zuncker, are admissible.

849 The Court: It is the same question that was presented yesterday, isn't it?

Mr. Miller: Yes, it is, sir.

The Court: The same ruling.

Mr. Miller: Yes. I make the offer to show by the witness, for the purposes of the record, of course, that he did explain to Mr. Zuncker the nature and character of this trust agreement, and tell Mr. Zuncker that the purchase of a certificate under this trust agreement would not make the certificate holder a member of the firm of Marcuse & Company.

Mr. Platt: I object to the offer as incompetent.

The Court: Sustained.

The Witness: That was on the 29th of June, in the morning.

Mr. Miller:

Q. The 29th of June?

A. The 29th of June.

Mr. Miller: Well, just so as to have the date right. The 29th of June.

Indulge me just a second, your Honor, while I glance at my notes.

Q. Mr. Robertson, in the order of events I slipped a matter I wanted to ask you about.

Did you at any time during the month of June have a conference in the office of Foreman, Robertson & Blumrosen between Messrs. Foreman, Sydney Stein, Marcuse and yourself?

A. I did have such a conference on the 20th of June.

Q. Was there any discussion or anything said by anybody in that conference relative to the attitude which had been taken by Colonel

Buckingham as to the organization of the firm of Marcuse & Company?

A. There was.

Q. What was said, and who said it?

A. Mr. Stein told Colonel Foreman and myself at that time that Colonel Buckingham, for his clients, had taken the position that they would not enter into an arrangement along the lines as the one that had been tentatively completed on the 2nd of April, and that they would not become partners, special or otherwise, in the firm of Marcuse & Company, but would insist upon having an arrangement go through, if it went through, in the form of a Massachusetts Trust in which they should hold beneficial certificates in some form.

850 Q. About how long, as near as you can tell, before the 30th of June did that conference take place?

A. It occurred on the 20th of June.

Q. What was the occasion of that conference, if you remember?

A. It was the first conference that I participated in with anybody but Colonel Foreman, after the matter had revived in June.

Mr. Miller: You may cross-examine Mr. Robertson.

Cross-examination by Mr. Platt:

Q. Mr. Robertson, I understand that your first connection with the matter began on the 26th of March, 1917?

A. Yes, sir.

Q. You gather that from reference to your diary, or something of that sort?

A. Yes. I have complete service records on various interviews and other services that I performed in connection with the matter.

Q. The dates you have given here have been refreshed in your recollection by consultation with your service memorandum?

A. Oh, yes, surely.

Q. Now, up to the 18th of June, as I understand it, your work was that of advising and conferring with Colonel Foreman, or being present with him at conferences, rather than any independent work on your part, is that right?

A. There was no work up to the 18th of June after the 3rd of April, excepting one conference with Colonel Foreman sometime in late April or early May.

Q. I wanted to be sure that I had my recollection correct of your testimony yesterday, Mr. Robertson.

A. Yes.

Q. You fixed the date of the 18th of June at which, I understood you to say, that Colonel Foreman then turned it over to you. Am I correct?

A. Well, he spoke to me about it, and I conferred with him on that day and the following day about what the situation was in the matter, and subsequent to that time I had the chief responsibility for it, although he was present at some subsequent conferences.

Q. Now, you were at that time thoroughly familiar with the contents of the agreement of April 2, 1917, were you?

851 A. Yes, yes. I had assisted in drawing it, I think, and in passing on it. Mr. Stein made the drafts.

Q. Those drafts, however, were revised by you and Colonel Foreman and Mr. Hoffman and Mr. Grollman, were they not?

A. I do not know that Mr. Grollman made any revisions, and I do not know just what revisions, if any, Mr. Hoffman made. I know Colonel Foreman and I both made suggestions and interlineations on the original drafts, and they were redrawn I think two or three times.

Q. You know Mr. Hoffman was consulted in regard to them, do you not?

A. Yes.

Q. And he represented his clients at various interviews in relation to that matter?

A. Yes.

Q. You met him at conferences in connection with the matter, didn't you?

A. I think I met him in conferences between March 26th and April 2nd.

Q. Mr. Robertson, did you confer with your clients about the changes and interlineations that you made on that—may I have that document? I am alluding now to Zuncker Exhibit 38.

A. Yes.

Q. With which you are familiar.

A. I think I showed them to Mr. Zuncker on the 29th, after they were completed. I had no conference with him while they were in preparation.

Q. That was before any instrument was executed in pursuance of this draft?

A. Yes.

Q. And, without asking you at all what was said, you went over with Mr. Zuncker, who was then acting on behalf of himself and your other client, Mr. Vette, the various changes which you had made in this document, and I presume discussed with him your reasons for making the same, or explained to him your reasons for asking the same?

A. I don't think my discussion with Mr. Zuncker was as detailed as the question would indicate, Mr. Platt, so far as the particular changes were concerned.

Q. Well, you submitted to him the instrument and pointed out the changes, is that what you mean?

A. I think I simply showed him the instrument and called
852 his attention to the fact that I had gone over and made certain changes. I do not think I discussed in detail with him the particular changes.

Q. Now, by whom were these changes and interlineations made, Mr. Robertson?

A. On this draft?

Q. Yes.

A. By me.

Q. And did you confer with Mr. Stein about them, or simply send him over this instrument?

A. I think Mr. Setin came in after Mr. Hoffman and I had gone over it on the 28th, and we talked with him about the changes and stated what had been done.

Q. Did you talk with any other member of Mr. Stein's firm about the changes?

A. I don't think so. I think I had only one talk in the matter with Mr. Mayer, which was sometime previous.

Q. Now, was it at this talk which you had, in which you gave Mr. Zuncker such information as you detailed about this prospective instrument, that the Zuncker and Vette checks were turned over to you?

A. No, I think they were not. I think I told Mr. Zuncker what would be necessary in the way of checks, and he afterwards brought or sent them over that evening or the next morning.

Q. What time of the day was it you had this conference with Mr. Zuncker on the 29th of June?

A. It was in the morning. I should say about 10 o'clock; between 10 and 11. I remember it rather distinctly.

Q. Handing you now the Zuncker check, which is marked, apparently, 9, do you know in whose handwriting the body of that check is?

A. I do not.

Q. Was that check filled out when it came into your possession?

A. It was.

Q. Are you familiar with the handwriting of Engstrom, the office manager of Marcuse & Company?

A. No, I am not familiar with his handwriting.

Q. You have seen it, haven't you?

A. Not to my present recollection, unless it is on statements of some kind.

Q. Well, do you know when Mr. Zuncker opened his account with Marcuse & Company?

852 A. His trading account?

Q. Well, any account with them.

A. No, I don't.

Mr. Platt: Have you those statements of Mr. Zuncker's?

Mr. Miller: I have got all I could find, Mr. Platt.

Mr. Platt: Have you all that Zuncker could find? That is what I want to know.

Mr. Miller: I guess so, because I told him to bring all that he could find.

Mr. Platt: Have you got his monthly statement at the end of the month?

Mr. Miller: No. Here is what I have got.

Mr. Platt: The matter isn't of sufficient importance to warrant me in taking up the time of the court in looking through those papers.

Q. How long were you in the office of Marcuse & Company on the 30th of June?

A. We were there some time.

Q. What time did you go over there?

A. I don't recall exactly, but, as I recall it, we were practically all morning, and my service record shows that fact.

Q. Of course, I do not know, Mr. Robertson, how early your mornings begin in June, 1917.

A. Well, it is useless to guess. I was over there an hour and a half or two hours, perhaps, and the interview terminated somewhere around 12—between 12 and 1 o'clock.

Q. Then you were there, you think, either at 10:30 or 11, or 11:30, or somewhere along there? I am taking your figures of an hour and a half, and taking one as the latest time which you left and 12 as the earliest. Is that correct?

A. That is approximately correct, I should say, Mr. Platt.

Q. For approximation, then, you would say you got there about 11 o'clock, either a little before or a little after, is that right?

A. I would judge I got there a little before 11 o'clock.

Q. If you were there until 1, you would have been there over two hours.

A. Yes, I might have been. I might have been there over two hours. I can only estimate it, and only inaccurately. In a general way I was there a substantial period of time.

Q. And were all the gentlemen you have named there all the time you were there that morning?

A. I couldn't recall whether they were all there all the time or not.

854 Q. Had Mr. Hecht already got there when you arrived?

A. That I don't recall.

Q. Was Mr. Finn already there when you arrived?

A. I couldn't say as to that. They were both present at some time during the period when we were closing the matter.

Q. You were in the inside office?

A. We were part of the time in Mr. Marcuse's private office. My recollection is that Mr. Hoffman and I went into another small office adjoining and made our comparison of these instruments.

Q. You don't undertake to say, Mr. Robertson, that none of the other people who were interested in some way or other in the formation of that firm may not have been there at some period during that morning, during business hours, without your having seen them or remembering their being there, is that correct?

A. I know who participated in the conference that morning.

Q. That is, who participated. This is—

A. All the conferences.

Q. —the time between half past ten—

A. Yes.

Q. —when you went there, or whatever time it was, and the closing of the deal and the time you left?

A. Yes.

Q. That is what you mean?

A. Yes.

Q. And that is all you mean?

A. That is all I mean. Any one might have come into the outer office and gone away again without my knowing it, of course.

Q. Now, Mr. Robertson, you went there that morning for the purpose of turning over \$55,000 to be put into the special or limited partnership of Marcuse & Company, did you not?

A. I went over for the purpose of delivering \$55,000 of Vette and Zuncker's money to Messrs. Hecht and Finn. I knew, of course, it was expected that they would put either that or its equivalent in money into the special partnership of Marcuse & Company.

Q. You went over there with these \$55,000 in checks with the intention of receiving from the Chicago Title & Trust Company what you denominate, or what we will denominate, as trust certificates, did you not?

855 A. Certainly.

Q. You didn't intend to put up this \$55,000 unless you were assured the Chicago Title & Trust Company were going to issue those certificates, did you?

A. Certainly not.

Q. You weren't going to deliver these checks on Mr. Hecht's note or Mr. Finn's note, or their joint note, were you?

A. No, sir.

Q. You delivered them at the office of Marcuse & Company——

A. Yes.

Q. —knowing that they were immediately going to be turned over to Marcuse & Company, did you not?

A. No.

Q. You didn't?

A. I didn't know whether they would be turned over to Marcuse & Company, or deposited by Hecht and Finn and their check made. I didn't know how that would be made.

Q. Mr. Robertson, as a matter of fact, while you were there, and in your presence, Mr. Hecht and Mr. Finn wrote their names on the back "Pay Marcuse & Company," and turned them over to the cashier of Marcuse & Company, did they not?

A. They did, certainly.

Q. You saw that done?

A. I saw that done.

Q. So whatever your anticipations were when you went there, while you remained there you knew that your clients' checks themselves were turned over by Mr. Finn and Mr. Hecht to Marcuse & Company?

A. Certainly.

Q. And knowing that, and upon that knowledge, you based your telephone talk with Mr. Pettibone that you wanted to be assured by him personally that, without any delay of hinderance or question, you would get your trust certificates?

A. Certainly.

Q. That is correct, is it not?

A. Yes, sir.

Q. Now, as a matter of fact, Mr. Robertson, you remember, do you not, that some one there sitting around that table took a piece of paper and a pen or pencil and added up the different checks that were laid upon the table to make sure that they amounted up to \$190,000? You remember that, do you not?

856 A. No. I don't recall that particular matter.

Q. Let me see if I can refresh your recollection. And that then thereafter Mr. Marcuse's contribution and check was written out, and that was added to the sum total? Don't you remember that?

A. I remember perfectly Mr. Marcuse wrote out his check for \$60,000. I don't recall any addition of the sum on a piece of paper by anybody, though that may have been done.

Q. While you were there, Mr. Robertson, Mr. Hoffman brought in and laid down a check, did he not?

A. He did.

Q. Laid down on the same pile as this, or in the same proximity, did he not, to the checks you had put down?

A. I do not know whether they were laid on a pile or not.

Q. They were all put in one place; assembled, weren't they?

A. I don't even know that, Mr. Platt. I know they were turned over and at the same place.

Q. Your recollection is pretty clear on some of these details that Mr. Miller has asked you about. Just search your recollection a little and see if you don't remember that all of these checks were laid on one table in the center of the room there.

A. We closed the transaction at a table back of Mr. Marcuse's desk. Mr. Marcuse's desk faced the wall, and the table was out in the center of the room. I think it is entirely *that* happened, Mr. Platt, but I have no special recollection of the checks being accumulated in that fashion.

Q. Did you satisfy yourself that the whole—\$190,000 that you knew was to be contributed to the special partnership was represented by checks there that morning?

A. Yes, sir.

Q. You took occasion to satisfy yourself of that, didn't you?

A. Certainly.

Q. And it was a condition of that that you delivered \$55,000 of your clients' money?

A. Certainly.

Q. And if the whole \$190,000 had not been forthcoming that day you wouldn't have put yours into the pot, would you?

A. No, sir.

Q. That is what you were there for?

A. Yes, sir.

Q. That is what Zuncker had told you to go there for on behalf of Vette and himself, wasn't it?

857 A. He didn't give me those specific instructions, but I assumed that was my obligation to him.

Q. You knew that was his understanding of what you were going to do, didn't you?

A. I do not know that I knew anything about his understanding about the details, Mr. Platt. I was supposed to attend to them for him. I did what I thought should be done. I do not think I consulted Mr. Zuncker on how to turn that check over.

Q. You regarded as a condition of your authority to deliver your clients' \$55,000 that the rest of the \$190,000 went in at that same place?

A. Certainly.

Q. And that it all went into Marcuse & Company, did you not?

A. Certainly.

Q. And if that hadn't been done you wouldn't have regarded yourself as at liberty to have left those checks there, would you?

A. Certainly not. I wouldn't have regarded myself as at all authorized to have left those checks, unless the delivery of the trust certificates was assured, and that could only be done by the completion of the fund, of course.

Q. Then that having been completed you still, in order to carry out what you regarded as the directions of your client, or at least that which you knew your clients expected to be done, you still took occasion to satisfy yourself, not by the word of Hecht or the word of Finn, but by the assurance of the Chicago Title & Trust Company, that you were going to get your certificates immediately, is that not correct?

A. Yes, sir, that is correct.

Q. Now, Mr. Robertson, you get that date of June 20, 1917, as the time when you say that Mr. Stein told Colonel Foreman and yourself, in the presence of Marcuse, that Colonel Buckingham, for his clients, was very insistent that there should be a Massachusetts trust formed—you get that date of the 20th of June, as I understand it, from your service record?

A. Yes, that was the first conference I had with anybody on the subject after the matter again was mooted in June.

Q. Now, did Mr. Stein say, or did Colonel Foreman say, at that time that way back in February, at some club or other, downtown, Colonel Buckingham had already suggested that he thought a Massachusetts trust was the best method of carrying out your purpose?

858 A. No, I don't think that was mentioned. Mr. Stein and

I had discussed the question of a Massachusetts trust in connection with this matter before the April 2nd conference, so that it was perfectly familiar to us.

Q. Well, don't you know that Colonel Buckingham had suggested it to Mr. Stein way back in February?

A. No, I don't.

Q. You didn't know that until you heard Colonel Buckingham say it here on the stand?

A. Well, I think I may have known it prior to hearing him say it on the stand. I learned it during the course of this trial on this hearing.

Q. Was there any discussion at that time as to what a Massachusetts trust was?

A. No, I can't say that there was.

Q. You assumed, all of you, that you knew what a Massachusetts trust was, is that correct?

A. Well, I assumed we had a general idea of what it was. I do not know that we should have known the precise details of it.

Q. And did you know what the provisions of such a trust would be in the way of liability and non-liability, and so forth?

A. Yes.

Q. That is what you had in mind, is that right?

A. I think we assumed we understood, in a general way, what was meant by that expression.

Q. And you say that you have now detailed, using, as I think, your own words, all that transpired about this matter of importance after the proposition was received in June, is that correct?

A. I do not recall saying so. I had some conferences with Mr. Stein and Mr. Mayer and with Colonel Foreman, several conferences, between the 20th of June and the 27th of June.

Q. And between the 8th of May and the 20th of June you knew, did you not, that Colonel Foreman and Mr. Stein had been having repeated conferences?

A. No, I didn't. On the contrary, I had no information of any but one.

Q. So then when Colonel Foreman turned this matter over to you on the 18th of June your understanding was he had had no conference for five or six weeks before that with anybody about it?

A. I assumed—he had a letter then from Mr. Stein, *which* 859 was present at that conference, and from that letter I assumed he must have had some talk on at least one occasion, but beyond that I had no information. So far as I know Mr. Stein had not been in the office. I do not know that the Colonel had seen him otherwise.

Q. Well, not all conferences on the subject took place in your office, did they, Mr. Robertson?

A. Most of them did, yes.

Q. Your office was the center in which the various parties who were arranging for this revival of the old firm, brokerage firm, in which some of your clients had been heavily involved—I mean by way of losing money on accounts or otherwise—was to be formed, isn't that correct?

A. Oh, no. I do not know anything about a revival of the old firm, if by that you mean a revival of the firm of Von Frantzius.

Q. I do not mean a revival of the firm, technically, Mr. Robertson. I mean a revival of the old business for the sake of rescuing from the ruins of that business various claims in which the parties who were promoting this new business were interested. Was your office the center of that activity?

A. No, not at all. We had very little to do with the Von Frantzius matter; but most of the conferences, both on the subject of the

creation of the special partnership in April, and on the new arrangement which was undertaken in June, were had, I think, at our office; at least most of those in which we participated.

Q. Did you have any conferences, Mr. Robertson, with any other member of Stein's firm, the firm of Stein, Mayer & David, about this, but Sidney Stein?

A. I had one talk, I think, with Mr. Elias Mayer.

Q. When was that?

A. I think on the 22nd of June, 1917.

Q. That you have not detailed?

A. No, I haven't been asked about that.

Mr. Platt: I think that is all.

Cross-examination by Mr. Jacobson:

Q. Mr. Robertson, you sat in court here throughout this hearing?

A. I have.

Q. At the counsel table?

A. Yes.

Q. And you have consulted with Mr. George W. Miller
860 and Colonel Buckingham and Mr. Donald Defrees from time to time?

A. I haven't had any consultation with Mr. Donald Defrees. I have talked with Mr. Miller and Colonel Buckingham.

Q. And you were in constant consultation while witnesses for the petitioner and other respondents were on the stand, were you not?

A. Well, I wouldn't say that. If anything arose that Mr. Miller wanted to know in connection with the testimony that *that* I knew, he asked me.

Q. You had the benefit of listening to the testimony of all the witnesses who testified here had you not?

A. I have listened to all the testimony that has been given here, yes.

Q. Have you received compensation for your services in this case?

A. I have not.

Q. Do you expect to receive compensation?

A. I do.

Q. From whom?

A. From Vette and Zuncker.

Q. Anyone else?

A. No.

Q. When were you retained by Vette and Zuncker in this matter?

A. I have never been retained by Vette and Zuncker in connection with this matter.

Q. Who employed you for Vette and Zuncker?

A. Nobody employed me for Vette and Zuncker.

Q. Did you inject yourself into this case?

A. No.

Q. Will you explain, again, your connection now?

A. Mr. Blumrosen and Mr. Miller have from time to time con-

sulted with me about the matter, both as to the facts and the law of the case.

Q. Did either Mr. Blumrosen or Mr. Miller employ you to sit here every day, as you have during this hearing?

A. Mr. Miller asked me to remain in immediate proximity to him so that if any facts came up that I was familiar with, and he was not, I would be in a position to tell him of them.

Q. Is that the extent of your engagement here?

A. That is the extent of my engagement here.

Q. Now, what fact has come to your attention that has led you to testify that you expect Vette and Zuncker to pay you for your services?

861 A. Because conferences have been had in a professional capacity by me with Vette and Zuncker and with their counsel.

Q. When were you first conferred with by Mr. Vette and Mr. Zuncker?

A. I should say about the middle of March, 1917.

Q. No. I mean in connection with this bankruptcy matter.

A. Oh, I should have said 1920.

Q. Are you sure it was the middle of March?

A. About that time.

Q. Wasn't it about the 11th of March?

A. No, it wasn't on the 11th. It may have been within a day or two after, which I should say was about the middle of March.

Q. Did they come to your office?

A. No, I think Mr. Blumrosen and I had the first conference on the subject.

Q. When did you have your first conference with Vette and Zuncker?

A. I think the first talk I had at which Vette and Zuncker were present was at Mr. Miller's office sometime in the latter part of March, as I remember.

Q. Oh, you came to Mr. Miller's office?

A. Yes.

Q. That is in the same building?

A. The same building with Colonel Foreman's present office and my office, yes.

Q. In the first National Bank Building in Chicago?

A. Yes, sir.

Q. When you got into Mr. Miller's office who was present there besides yourself and Mr. Miller?

A. Vette, Zuncker, Blumrosen and Colonel Foreman.

Q. Who suggested the idea of sending for Mr. Regensteiner?

A. I do not know that it was suggested. I do not recall any—

Q. Were you employed by Mr. Theodore Regensteiner here?

A. No.

Q. By Colonel Buckingham?

A. No.

Q. Or by the Studebaker Brothers?

A. No.

Q. Or by Richard Yates Hoffman?

A. No.

862 Q. Now, was there a time—was there any conference at which Colonel Buckingham or Mr. Richard Yates Hoffman were present—any conference in Mr. Miller's office?

A. I do not recall any.

Q. You folks have been conferring together, have you not, recently?

A. If you will state whom you mean by "you folks," I perhaps can answer.

Q. I refer to you, Mr. Miller, Colonel Buckingham, Mr. Richard Yates Hoffman and Louis Grollman.

A. Yes, I have had conferences in which all the gentlemen you name were present.

Q. When did you all get together?

A. I think the first conference that I know of at which all of these men were present was one in Colonel Buckingham's office.

Q. And when was that?

A. Possibly three or four weeks ago.

Q. Was that after the time that an answer was filed here by Hecht and Finn in which it was charged that Studebaker Brothers and Vette and Zuncker and Regensteiner were in some similar position as respects themselves?

A. I think it was. I think that answer had been filed at that time, yes.

Q. Was it outlined then that you would all present the same defense?

A. I do not know that it was outlined that way.

Q. Did someone propose that?

A. I heard no such conversation.

Q. From then or from the time that conference started until the present time have all of you been co-operating with each other in connection with the defense presented by the Studebaker Brothers, Vette, Zuncker and Regensteiner?

A. I should say that there has been co-operation among the representatives of the various people you name.

Q. When did you first hear the matter discussed that it would be well to show, if possible, that the first deal was off?

A. I never heard that matter discussed.

Q. You never heard it discussed that it would be——

A. That it would be well to show, if possible, that the first deal was off?

Q. Yes.

A. No.

863 Q. Or that it would be necessary to show or make claim that the first deal was off?

A. No, I never heard such expression used.

Q. Did you hear Mr. Miller say anything to Mr. Buckingham in court with reference to it?

A. No, I don't recall any such conversation.

Q. Colonel Buckingham has been in court throughout the hearing, the same as you have been?

A. I do not know whether he could say the same as I have been. He has been here.

Q. And upon the same occasions every day?

A. Yes.

Q. When was the first time you saw Mr. Regensteiner or Mr. Grollman present at any conference?

A. I first saw Mr. Grollman present at the conference I mentioned in Colonel Buckingham's office. I do not remember meeting Mr. Regensteiner in any conference at all at any time.

Q. Did you send for Mr. Grollman?

A. No.

Q. Who sent for you to go to Colonel Buckingham's office?

A. I think Mr. Miller called me up and said there was a conference at Colonel Buckingham's office.

Q. And then you went over there?

A. I went over.

Q. Have you been paid for your services in representing Vette and Zuncker in 1917?

A. The firm was paid, yes.

Q. Well, there was a time when the matter was turned over to you?

A. There was no distinction in payment between the Colonel, Mr. Blumrosen and myself at that time. All charges were rendered by the firm as a whole and collected by the firm as a whole.

Q. You stated in answer to a question put by Mr. Platt that you have refreshed your memory from your minutes or service records?

A. Yes.

Q. Have you that service record here?

A. I haven't it here. I can readily produce it.

Q. If you will, please.

A. I will send for it. You may have to wait until tomorrow, unless I do it before the office of Foreman & Blumrosen closes.

864 Mr. Jacobson: May we let that part of the cross-examination go, and I will proceed to something else with the same witness?

Q. You knew there was a petition in bankruptcy filed here, did you not?

A. Yes.

Q. When did you discover it had been filed by C. B. Giles, John Janka and I. Fiegel?

A. I do not think I ever knew who the petitioning creditors were.

Q. Well, do you know who prepared that petition?

A. No.

Q. Colonel Foreman, to your knowledge, represented only Vette & Zuncker, did he not?

A. At what time?

Q. Since April 2, 1917, until the present day.

A. So far as—well, I understand his firm represented the receiver a short time and then withdrew.

Q. You say Colonel Foreman also represented the receiver at one time?

A. I said I understood his firm represented the receiver at one time.

Mr. Miller: I didn't go into anything of that kind, your Honor. The previous part of the cross-examination I said nothing about because I thought that went to the question of credibility. When he gets to what Colonel Foreman may have done or may not have done, that isn't cross-examination.

The Court: Colonel Foreman withdrew his appearance as one of the attorneys for the receiver when the question of these other possible liabilities came up, in connection with which he immediately realized that possibly he might be a witness on the trial, so he withdrew his appearance as attorney for the receiver.

Mr. Jacobson: I understand. The purpose of this cross-examination, your Honor, is to show the interest of this witness in the event of this suit.

The Court: Go ahead.

Mr. Miller: Well, the line of examination showing that I don't object to, of course, but does he show any interest of this witness by showing that Colonel Foreman or Colonel Foreman's firm, at a time when he wasn't a partner of the firm—he has not been a partner of the firm for a long time—did this, that and the other thing? He had Colonel Foreman here and had his chance to cross-examine.

865 The Court: What is the purpose of that, Mr. Jacobson?

Mr. Jacobson: To show the interest, your Honor, of this witness in this matter, because he started out as one of the attorneys for Vette and Zuncker, and any activity of his, or any activity of any of his associates since that time, on behalf of Vette and Zuncker, I think is pertinent to this matter and affects the credibility of this witness.

The Witness: I have no interest in the present firm of Foreman & Blumrosen.

Mr. Jacobson: I move that be stricken out, your Honor.

The Court: You have got here—there isn't any question about this witness' interest in the ultimate decree here. As a judicial officer I may know what any citizen would know, that a lawyer, who had to do with the advising of the entering into of this arrangement, of course, wouldn't be happy if he heard that he had made a mistake. You don't need to spend much time on that. At least that is the way I used to feel when I was practicing law. I used to feel I would rather have it come out right than come out wrong.

Mr. Jacobson:

Q. Mr. Robertson, when you say you produced some checks on June 30th and that at the same time the partnership contract be-

tween Marcuse, Morris, Hecht and Finn was signed, and then you said that later this trust agreement, Petitioners' Exhibit 6, was signed, you don't mean that those things were not all signed and done as part of the same transaction, do you?

A. I should say they were successive transactions if I were asked my opinion about it, but they were done at the same time and in the same room, if that is what you mean. I say at the same time. I mean the same morning.

Q. You knew, did you not, that the consummation of all of these matters was necessary before Marcuse & Company could start in business, didn't you?

A. No, it was not the fact that they were all necessary before Marcuse & Company could start in business. They were all contemplated—

Q. What do you mean by contemplated?

A. —as a condition of Marcuse & Company starting.

Q. Oh, yes.

A. It was anticipated that it would be done in that manner, but it was not necessarily done in that manner.

Q. Now, you do have a distinct recollection that these original contracts, Zunker Exhibits 1 to 8, both inclusive, were carefully retained until July the 11th, 1917?

866 A. They were retained until July 11th, or about that time, 1917.

Q. In a safe place, were they not?

A. Supposedly. They were in the vault of the firm of Foreman, Foreman & Blumrosen.

Q. Then what was done, if you know, with these contracts?

A. Mr. Stein and I arranged by telephone to meet for the purpose of cancelling them, and we met and cancelled them.

Q. Now, Mr. Robertson, what else did you do on March 28th or March 26th besides have a conference with Colonel Foreman?

A. In this matter?

Q. March 26, 1917?

A. In this matter?

Q. In any matter.

A. I couldn't remember without referring to records that would show. I can give in detail an account of my activities that day, if you—

Q. Do you propose to tell us now that you recall what took place March 28th or March 26th, 1917?

A. I can recall one thing that took place on March 28th very distinctly.

Q. Yes. Now, when you tell this court in answer to Mr. Miller's question that you only saw certain individuals on a certain day, are you testifying from memory or from some other thing that is in your mind?

A. I am testifying from my knowledge of the facts, supplemented as to the particular date by the refreshing of my recollection by means of service records which I kept.

Q. Do your service records of March 26, 1917, state the people whom you saw?

A. Yes.

Q. Did it give the names of all the persons you saw and talked to?

A. In most cases it gave the names of all persons. In some cases it referred to them by a general designation.

Mr. Jacobson: Your Honor, may I stop the cross-examination now, and take it up when he brings his service record in?

Mr. Miller: Is everybody through with this gentleman now?

867 Redirect examination by Mr. Miller:

Q. I forgot to ask you what you did with Zuncker Exhibits 1 to 16, both inclusive, after you and Mr. Stein tore off the signatures?

A. There was an additional copy of the contract which was likewise cancelled in the same manner, and which Mr. Stein kept. He and I discussed what should be done with the remainder, being the ones you have there, and agreed that they should be left in our vault, and it was done.

Q. Did you take them back and put them in your vault?

A. Yes.

Q. Mr. Robertson, unless you are a little sensitive about it, are you a creditor of Marcuse & Company?

A. I am.

Mr. Miller: That is all.

Mr. Jacobson: How much?

A. \$3,000.

Q. How much?

A. \$3,000.

Q. You mean you traded there?

A. I do.

Q. And do you believe, therefore, that this court should make a finding against Hecht and Finn?

Mr. Miller: I object.

A. I am not to decide the matter. That is up to the court.

The Court:

Q. What were you in? Long or short or what?

A. Long, your Honor.

Q. What?

A. 500 shares of American La France.

The Court: Put his money on a spavined horse. Call your next witness.

RICHARD YATES HOFFMAN, called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Miller:

Q. What is your name, please?

A. Richard Yates Hoffman.

Q. You live in Chicago?

A. I reside in Winnetka, Illinois.

868 Q. What is your business?

A. Lawyer.

Q. What firm are you connected with?

A. Defrees, Buckingham & Eaton.

Q. Mr. Hoffman, are you the Richard Yates Hoffman who has been frequently referred to throughout this trial?

A. Very.

Q. Were you present in the office of Colonel Foreman on the 2nd of April, 1917—

A. I was.

Q. —when these documents, Zuncker Exhibits 1 to 8, both inclusive, were signed?

A. I was.

Q. Was anything said by anybody on that occasion as to what should be done with those documents after they were signed?

A. On that occasion Colonel Foreman, Mr. Stein and I conferred generally, and Mr. Foreman announced that those documents, when they were signed, would be retained by him in his possession and should not become—should not be delivered or become effective until two things occurred: One, that the bankruptcy pending against Von Frantzius & Company in this District Court be dismissed, and the other that the plan which Mr. Marcuse was working on with the administrators of the Van Frantzius Estate, for the taking over of the assets of that estate, should be consummated fully.

Q. I show you Zuncker's Exhibit 16, and ask you if you can tell from what remains of the signature if that is your handwriting.

A. It is.

Q. Did you sign that document?

A. I did.

Q. And deliver it or return it to Colonel Foreman?

A. I did.

Q. Mr. Hoffman, were you present at any meeting subsequent to the 2nd of April, 1917, in Colonel Foreman's office, attended by Messrs. Marcuse, Morris, Sydney Stein, Colonel Foreman, Mr. Robertson and yourself, Mr. Vette, Mr. Zuncker and Mr. Regensteiner and Scott Brown, or substantially that number of gentleman—of those gentlemen—at which either Mr. Marcuse or Mr. Sydney Stein explained that it had been arranged for Mr. Hecht and Mr. Finn to represent the rest of you gentlemen, and by which I mean yourself and Mr. Regensteiner, Mr. Vette and Mr. Zuncker, as special
869 partners in the firm of Marcuse & Company, or words to that effect?

A. I was not. I know of no such conference.

Q. Were you present at a conference in the early part of June, 1917, in the office of Colonel Buckingham, attended by Colonel Buckingham, Mr. Marcuse, Mr. Sydney Stein and Mr. Scott Brown?

A. I was.

Q. Did you hear the conversation that took place at that conference?

A. I did.

Q. Tell us, as near as you can, the substance of that conversation, indicating to us who did the talking and the substance of what each one said, so far as your memory now serves you.

A. Mr. Stein stated that because of a practice of the New York Stock Exchange it would be impossible to carry out the partnership agreement of April 2, 1917; that that agreement, therefore, or the partnership evidenced thereby, would have to be abandoned; that the Stock Exchange practice to which he referred in substance was that a limited partnership doing a brokerage business could hold a membership on the New York Stock Exchange only if it had two or three members,—at least not as many as six members; that he was desirous, in view of the large amount of time and energy that he and Mr. Marcuse had put into this matter, to organize a new partnership; that he was not clear that he could obtain the consent of all six of the original special partners or purported special partners to the new partnership; that he—he then stated also that at one time there had been intimated to him that the Studebakers would invest something like \$100,000 with him. He wondered whether that intimation could not be carried into effect now in the organization of a new partnership. Colonel Buckingham then stated that he was absolutely unwilling that the Studebakers, or anyone representing them, should become special partners in Marcuse & Company or any other organization in any other brokerage partnership.

I neglected to state also that in giving Mr. Stein's conversation that he had suggested that either the Studebakers become special partners, or that I, representing them, or someone else representing them, should become a special partner.

Colonel Buckingham stated that neither of the Studebakers
870 would become a special partner; that he was unwilling I should become a special partner, or that anyone in his office or representing the Studebakers should become a special partner in Marcuse & Company. He recalled a conference or a conversation which he had had, or stated he had had, with Mr. Stein in the early part of the year at which he had suggested that the proper way of protecting the people who were to contribute any money would be through a trust. He then stated that he would be unwilling to permit his clients to invest any amount such as \$100,000 in the enterprise, whatever it might be; whatever form it might take; that \$50,000 he believed would be the limit.

He then suggested that if a proper trust arrangement would be made, amply protecting his clients, in his opinion, against any liability and dissociating his clients absolutely from the partnership, he

would be willing to recommend to his clients for the going on with the matter, that the trust suggestion was particularly pertinent because any money that would be invested would be the money of Studebaker Brothers Trust; that it would be necessary in order that Studebaker Brothers Trust make the investment that there should be some form of security, negotiable security, which that trust could hold as part of its funds.

Q. Did Mr. Scott Brown take any particular part in the conversation as to his end of it, or was the talk largely, if not entirely, by Colonel Buckingham?

A. Mr. Brown and I said very little, if anything. The conversation was principally between Colonel Buckingham and Mr. Stein. Mr. Marcuse did in the early part of the conference join in with Mr. Stein in stating the New York practice. I think some question was asked him whether that was correct, and he said yes.

Q. Do you know whether there was submitted to your office later by Mr. Stein a *swarm* of a trust agreement?

A. There was.

Q. Was there more than one, do you recall?

A. There were two; two trust agreements, or purported trust agreements submitted by Mr. Stein's office.

Q. Did you see them?

A. I did.

Q. I show you Zuncker Exhibit 36 and Zuncker Exhibit 37, and ask you if those are the two documents that you refer to?

A. Yes.

Q. Did you have anything to do in connection with Colonel Buckingham with preparing a draft of a trust agreement in your own office?

A. I did.

Q. I show you Zuncker Exhibit 38, and by this question I refer now only to the white paper and to the blue, if it is blue, typewriting on the white paper, and ask you if that is a copy of a draft, or the draft, that was worked out in your office?

A. It is.

Q. Did you submit copies of that document to anyone?

A. I did.

Q. Who to?

A. I submitted copies of this document—two copies to Mr. Stein, of which this is one, and left both of them with Mr. Stein.

Q. Where?

A. At Colonel Foreman's office.

Q. Now, did you ever see this document later in the hands of Mr. Robertson?

A. I did.

Q. I call your attention to some eight lines purporting to strike out some portions of the document, to ten interlineations and inserts made there in longhand. Do you know whose handwriting those are in, or did you have any talk with Mr. Robertson about them?

A. To both I answer yes.

Q. Now, where did you have that conference?

A. That conference was had at Mr. Robertson's office; that is, Foreman, Robertson and Blumrosen's Office.

Q. Did you go over this document with Mr. Robertson?

A. I did.

Q. There is pinned to one of these sheets a yellow piece of paper with some typewriting on. Do you know who put that on?

A. That was pinned to the document in my presence by Mr. Robertson.

Q. Now, after you and Mr. Robertson had worked over this document, do you remember whether or not you or you and Mr. Robertson together, saw Mr. Stein in connection with it?

A. We did, both of us.

Q. Did you see Mr. Louis Grollman?

A. I did not.

872 Q. Where did you see Mr. Stein?

A. At Mr. Robertson's office.

Q. Did you and Mr. Robertson go over this document with Mr. Stein?

A. We did.

Q. What is the fact as to whether or not, as a result of your going over it with Mr. Stein, it was approved in the form in which it had been worked out by you and Mr. Robertson, by Mr. Stein?

A. Mr. Stein expressed his approval of that document as so changed.

Q. To whom was the task left of putting this document which had been worked over in the form in which it appears into shape for final signature, or having it re-written?

A. My recollection is that that was left for Mr. Stein, or Mr. Stein's office.

Q. Mr. Hoffman, were you present on the 30th of June at the office of Marcuse & Company?

A. I was.

Q. Who did you meet there?

A. There were present during the time I was there Mr. Marcuse, Mr. Morris, Mr. Hecht, Mr. Finn, Mr. Grollman and Mr. Robertson, and there may have been—there probably were others. Mr. Engstrom may have been there, others in that organization may have been in and out of the room, but those are the people whom I recollect distinctly.

Q. Was Colonel Buckingham, or Colonel Foreman or Mr. Vetty, or Mr. Zunker, or Mr. Regensteiner, or Mr. Scott Brown there?

A. None of them was there while I was there.

Q. I show you a check in evidence as Petitioner's Exhibit 10, being the check of Studebaker Brothers Trust. Did you take that check over there that day?

A. I did.

Q. From whom did you get it?

A. I received it from Mr. Scott Brown. I should say I received it from Mr. Scott Brown's office. It was sent to me by messenger.

Q. Did you deliver the check that day?

A. I did.

Q. Who to?

A. I have no definite recollection.

Q. Now, while you were over there at the office of Marcuse & Company, was the so-called Hecht-Finn trust agreement, as finally prepared for signature there?

873 A. It was.

Q. Did you and Mr. Robertson do anything with reference to an examination or comparison of it?

A. We did.

Q. What did you do?

A. We compared the two. We compared the document which you have shown me, which is in evidence here, No. 38, with the Fair copy that was present at that meeting as the copy for execution.

Q. Was that the copy that was executed, or that had been, whichever the case might be?

A. I do not recollect whether that copy then was, or had been executed; but it was the copy that, before I left the meeting, was executed as the definitive document.

Q. Now, did you later procure from the Title & Trust Company a trust certificate?

A. I did.

Q. It has appeared in evidence, Mr. Hoffman, that that certificate was assigned by you to a Mr. Gardner. Is that in accordance with your understanding? Did you make that assignment?

A. I did. I received the certificate from the Title & Trust Company personally on the 2nd of July, and immediately sent it by messenger to Mr. Scott Brown, together with an assignment.

Q. With an assignment?

A. Yes.

Q. Did that close your connection with the matter?

Mr. Jacobson: Wait a minute.

Q. I never saw the certificate again, nor have I any knowledge or interest in it.

Mr. Jacobson: That question about closing his interest in it I think is an improper question on cross.

The Court: Does his answer trouble you any?

Mr. Jacobson: No, your Honor.

The Court: The question is not evidence.

Mr. Miller: That is all.

Cross-examination by Mr. Platt:

Q. Mr. Hoffman, without intending anything by way of criticism, I presume that possibly the fluency of your narration of the various events that occurred three or four years ago, in the details of the conversations which you have narrated in considerable detail—

874 A. Yes.

Q. (Continuing:) And without much pause for consideration,—has your recollection been somewhat refreshed by hearing the testimony of other witnesses and other statements made here in the court room?

A. Most assuredly.

Q. And possibly by the argument of counsel?

A. I don't know about that, Mr. Platt. I have heard no argument.

Mr. Platt: Now, Mr. Miller, as a part of the cross-examination of Mr. Hoffman, may I be deemed to have asked him whether or not on the examination by the court on March 29th, 1920, he was asked each of the questions which the Court propounded to him, and if he made each of the answers, and if the questions and answers contained in the transcript were all the questions and answers made by him that day, without reading them? We are all familiar with them.

Mr. Miller: Yes.

Mr. Platt: And may it be assumed that the witness would have answered that he did—that the question was asked and that he did make the answer in each case as shown by the transcript?

Mr. Miller: Yes.

The Witness: I think so, Mr. Platt.

Mr. Jacobson: And that he was under oath.

Mr. Platt: Yes. I take that method for the purpose of saving time, because I think we are all familiar with the proposition.

Q. Now, Mr. Hoffman, this check of \$50,000 that had been sent to you by Scott Brown, purports to be drawn by the Studebaker Brothers Trust. You had been a member of Colonel Buckingham's firm, or associated with that firm at the time that Studebaker Brothers Trust was organized, had you not?

A. I was associated with that firm at that time, yes.

Q. And were quite familiar with the Studebaker Brothers Trust?

A. I was not.

Q. Didn't you know who composed the Studebaker Brothers Trust?

A. I had no knowledge of the Studebaker Brothers Trust at the time it was drawn up, if that is what you mean.

Q. Had you on the 30th of June, 1917, become somewhat familiar with that organization, to use a non-committal term?

875 A. No, I never had.

Q. You had not?

A. No.

Q. Well, you knew when you went over there on the 30th of June that you were representing somebody, didn't you?

A. I did.

Q. You knew that you were not acting as an investor in your own capacity?

A. I certainly did, Mr. Platt.

Q. But you did not know that you were representing the Studebaker Brothers' Trust, is that correct?

A. I did not say that.

Q. Well, did you know that you were representing the Studebaker Brothers' Trust?

A. I did.

Q. Did you know that the Studebaker Brothers' Trust was an organization of which George M. Studebaker and Clement Studebaker, Jr., were in active control?

A. I had no knowledge of that matter at all.

Q. All you knew was that Mr. Scott Brown was going to produce \$50,000 for the benefit of the Studebaker Brothers' Trust, whatever that might be, is that correct?

A. I knew there was such a thing as Studebaker Brothers' Trust, and I knew that the check for \$50,000 was signed by the Studebaker Brothers' Trust and was sent to me and made out to my order, and that is the check.

Q. And so far as you were concerned, that represented a trust fund?

A. I don't think I had any thought about it one way or the other.

Q. You did not regard yourself as indebted to the Studebaker Brothers' Trust for \$50,000, did you?

A. I did not.

Q. You did not regard it as a loan to you?

A. No.

Q. Who wrote on the top, the reverse of this check, "Pay to the joint order of Frank A. Hecht and Joseph M. Finn, as trustees"?

A. I did.

Q. That is in your handwriting, as well as the endorsement?

A. It is.

Q. Where did you write that?

876 A. I think at Marcuse & Company's; at the office, the Trust Office of Marcuse & Company.

Q. You have no doubt about that, have you? You say "I think."

A. I do not recall whether it was done there. I will say it was, yes.

Q. And you knew when you made that endorsement that the \$50,000 which you were turning over was to be invested as a part of the capital of Marcuse & Company, a limited partnership or special partnership?

A. I did not know that.

Q. You did not know that?

A. In the form your question is, my answer is, I did not know that.

Mr. Platt: Will you read the question so that I can get the form that the witness is alluding to.

(The question was read.)

Q. You did not know that?

A. Not in the form you put the question, no.

Q. Well, of course I don't know what you mean by your mental reservations, Mr. Hoffman.

A. I will explain.

Q. Let me make another attempt, and I will try to modify the form so as to get it quite distinct, so that there will be no misunderstanding between us. This piece of paper in your mind represented \$50,000 in real money, didn't it?

A. Yes.

Q. You regarded it as the equivalent or token of \$50,000?

A. Yes.

Q. Of cash, United States legal tender, if necessary?

A. Yes.

Q. You knew, did you not, that there was to be a partnership—I am not using any modifying words now—you knew there was to be a partnership formed under the title of "Marcuse & Company"?

A. I did.

Q. You knew that \$190,000, the equivalent of real coin of the realm, was going to be paid in as part of the capital of that firm, did you not?

A. I did.

Q. You knew that the \$50,000 represented by this check was going to constitute a part of that \$190,000, did you not?

A. I did not.

Q. You didn't know it?

877

A. No.

Q. Did you have any suspicions on that subject?

A. The \$50,000 that is represented by that token was to be paid to Messrs. Hecht & Finn as trustees, as the endorsement indicates.

Q. Mr. Hoffman, you held this as a trustee, did you not?

A. I don't know what my legal relation—

Q. This \$50,000,—

A. —what my legal relation was.

Q. Or as a messenger?

A. Call it a messenger, if you wish.

Q. Were you there as a messenger or as a Massachusetts trustee, or an Illinois Trustee, or what kind of individual were you?

A. I beg your pardon.

Q. I am asking in what capacity you were acting?

A. I don't know.

Q. You don't know?

A. In a representative capacity, of some kind.

Q. You turned this money over to Mr. Hecht and Mr. Finn as trustees?

A. I did.

Q. Did you understand that they were at liberty to invest it in American La France, or what was the title of the concern that some of your colleagues regarded as a good investment? Did you regard that as a proper thing for them to do?

A. I did not.

Q. You knew that it was turned over to them for just one purpose, didn't you?

A. Not this——

Q. Just answer me that question, if you can.

A. What is the question, please?

Q. In that form, too?

A. What is the question, please?

(Question read.)

A. Yes.

Q. What was that purpose?

A. To constitute the purpose of the Hecht-Finn Trust.

Q. And what was the destination of the corpus of the Hecht-Finn Trust?

The Court: Unless there is something particular here that you are after, we won't waste any more time on the question as to what this man thought was going to become of that money.

S78 Mr. Platt: If your Honor please, I will agree with your Honor.

The Court: Yes.

Mr. Platt: But I don't think it is altogether a waste of time.

The Court: Go ahead.

Mr. Platt: Pardon me. I am through. But I do not think I have altogether wasted time in showing the unwillingness of the witness.

The Court: I cannot understand the attitude of this witness. There cannot—and I will say that to you very frankly—there cannot be any doubt in anybody's mind what that money was intended for, or what the drawer of the check intended it for.

Mr. Platt: That was my sole purpose for the last five minutes of this examination, and I think that is sufficiently demonstrated.

The Court: If this kind of attitude appeared in an ordinary bankruptcy case, the gentlemen sitting around here in this case would go out of the court room talking about what happened in bankruptcy hearings. And that is the plain truth of this situation.

Mr. Platt:

Q. Mr. Hoffman, at what time did you reach the office of Marcuse & Company on the 30th day of June?

A. I should judge about 10:30, 11:00 o'clock; perhaps earlier, perhaps later, Mr. Platt.

Q. It couldn't have been much earlier, could it?

A. I don't know.

Q. Was Mr. Robertson there when you got there?

A. I think he was.

Q. And how long did you stay there?

A. I stayed there I should judge an hour perhaps, perhaps more.

Q. Well, what is your best recollection?

A. I stayed there long enough, Mr. Platt, to complete the things

that I went over to do. Now, I don't recall whether it was an hour, two hours, or half an hour.

Q. And of course you don't know who were there before you came, or after you left?

A. I do not.

Q. You put that check in with the others and saw them added up to \$190,000, did you?

A. I don't recall definitely what I did with the check. I knew there was \$190,000 appeared there at that meeting.

879 Q. You satisfied yourself of that before you turned over your check, didn't you?

A. I think so.

Mr. Platt: That is all.

Cross-examination by Mr. Jacobson:

Q. Whose money was over there that constituted \$190,000 at that time?

A. There wasn't any money there.

Q. Well, what constituted the \$190,000 there that day?

A. Various checks.

Q. Whose checks?

A. I don't recall definitely. I think they were the checks that are in evidence here.

Q. Well, whose, and give us the amounts?

A. I can't do that. If you will show me the checks, I will be glad to tell you.

Q. I know, but you had a startling recollection of certain conferences——

A. Definite.

Q. Now, you tell me what your recollection is about the checks that were there that day.

A. The checks that were there that day are——

Q. Well, whose?

A. I beg pardon. Are you interrupting me?

Q. I beg your pardon. I simply wanted to get my question clear, so as to get a definite answer.

A. I beg your pardon.

Q. Just name us the persons and the amount of the contributions there that day?

A. My recollection is that they were the checks that are here in evidence. I cannot give you the amounts from recollection.

Q. Have you a service record to fall back on?

A. Yes, sir.

Q. Have you looked at it recently?

A. I certainly have.

Q. And you have been in conference with these lawyers since you were examined as a witness by his Honor, Judge Landis on March 29th, 1920?

A. Yes, both before and after.

Q. Was there a conference of all these lawyers before March 29th, 1920, in connection with Marcuse & Company, Colonel Buckingham, Mr. Miller, Mr. Scott Brown, Louis Grollman, Mr. Robertson and Colonel Foreman?

A. No.

Q. When was the first conference of all of those gentlemen, if you know? How long after the examination in which you testified as a witness on March 29th?

A. I think about the middle of April.

Q. That was after an answer was filed in this court on behalf of Hecht & Finn, naming you, George Studebaker and Clement Studebaker, Jr., wasn't it?

A. Very likely. I don't know.

Q. You testified before that there were two things somebody said had to be done before this deal could go ahead, didn't you?

A. I did.

Q. And it was in your mind that both of them had to be done before June 30th, 1917?

A. No.

Q. Well, when did they have to be done?

A. I don't know; I hadn't in mind when they had to be done.

Q. But the deal went ahead, didn't it?

A. Yes.

Q. Don't you know that the second thing you referred to, which was the transference of the Von Frantzius assets to Marcuse, did not occur until August 1st, 1917?

A. I so understand, yes.

Q. And that neither you, nor Colonel Buckingham, nor Scott Brown, nor anybody else raised that as an objection on June 30th, when you put up your check?

A. That is correct.

LOUIS GROLLMAN, called as a witness on behalf of the respondent, having been previously sworn, testified as follows:

Direct examination by Mr. Miller:

Q. What is your name?

A. Louis Grollman.

Q. Where do you live?

A. Chicago.

881 Q. And your profession is what?

A. Lawyer.

Q. How long have you been at the bar?

A. About twenty years.

Q. Do you know Theodore Regensteiner?

A. I do.

Q. Is he a client of your law?

A. He is.

Q. How long have you been his attorney?

A. About eleven years.

Q. Did you represent Theodore Regensteiner in connection with the Marcuse & Company organization that was worked out, and later—and the Hecht-Finn Trust arrangement?

A. I did.

Q. I show you Zuncker's Exhibit 38, and ask you if you ever saw that?

A. Well, I am not sure that I saw this identical one, but I saw probably a copy of it, a carbon copy.

Q. Where did you see it?

A. At Colonel Foreman's office.

Q. Who did you meet there at the time you saw this, if this is the one?

A. I think—well, I am sure Mr. Robertson was there, and Colonel Foreman.

Q. Did you examine the document which you saw there at that time?

A. I did.

Q. Were you present at the office of Marcuse & Company on the 30th of June, 1917?

A. I was.

Q. I show you Petitioner's Exhibit 17, and ask you if you took that check over there that day?

A. Yes, sir; I did.

Q. From whom did you get that check?

A. Why, I think it was handed to me by my brother.

Q. What is your brother's name?

A. I. Grollman.

Q. Is he the business associate of Theodore Regensteiner?

A. He is.

Q. Do you remember who it was that you met over at Marcuse & Company on the 30th of June, 1917?

A. As near as I can recollect, Mr. Robertson was there, Mr. Hoffman, Mr. Hecht, Mr. Marcuse,—I am not sure whether Mr. Finn was there or not.

Q. Was Mr. Regensteiner there?

A. He was not.

Q. Scott Brown?

A. No, sir.

Q. Nor Mr. Vette nor Mr. Zuncker?

A. No, sir.

Q. Did you deliver this check on that occasion?

A. On that morning.

Q. Now, after you had examined this petitioner's Exhibit 38, or a copy of it, as you say, did you have any talk with Mr. Theodore Regensteiner with reference to the trust arrangement that had been worked out?

A. I did.

Q. Did you explain to him what it was?

A. I did.

Mr. Platt: Of course it is understood that my objection goes to this line of questions?

Mr. Miller. Yes. That is all.

Cross-examination by Mr. Platt:

Q. Mr. Grollman, what time did you go to Marcuse & Company's office?

A. Oh, I would say it was about 10:30 or 11:00 o'clock that morning.

Q. Did you stay there long?

A. About half an hour, I should say.

Q. Left them there when you went away?

A. Sir?

Q. Left the same persons there that you have named, when you went away?

A. I don't know that I left all of them there, but they had not all gone when I left.

Q. You left about what time, did you say?

A. Oh, I would say about 11:30.

Q. And at that time had the \$190,000 of capital been contributed?

A. I assumed it was; I did not stop to check it up.

Q. You did not stop to check it up?

A. No.

Q. You saw the checks there, did you?

883 A. I saw some checks, yes.

Q. Saw other people handing their checks in?

A. Yes.

Q. You did not have any doubt where this money was going, did you?

A. No. I had an idea as to *whether* it was going eventually.

Q. I say, did you have any doubt about it?

A. No.

Q. And you represented Mr. Regensteiner all through these various negotiations, beginning back in March?

A. Do you mean in 1917?

Q. In 1917?

A. Well, let me say, Mr. Platt, that neither Mr. Regensteiner nor myself took a very active part in these negotiations. In fact I don't think that I attended more than about three conferences, may be not that many. I don't think Mr. Regensteiner attended more than one. The entire matter was handled by Colonel Buckingham, Mr. Robertson, Mr. Hoffman and Mr. Stein.

Q. Did they represent Regensteiner in their conferences and negotiations?

A. No, they did not represent Mr. Regensteiner, but I told Mr. Regensteiner that those gentlemen were working on the trust agreement when this agreement of April 2nd, 1917, was abandoned, and that when the final draft was ready they would submit it to us.

Mr. Platt: That is all.

Cross-examination by Mr. Jacobson:

Q. Mr. Grollman, you are related to I. Grollman, are you not?

The Court: He says he is his brother.

Mr. Jacobson:

Q. And what relation are you to Theodore Regensteiner?

A. None at all.

Q. And what business relation, if any, is there between I. Grollman, your brother, and Theodore Regensteiner?

A. My brother is one of the officials of the Regensteiner Colortype Company.

Q. What office does he hold?

A. I don't know what it was then. I think he was—I guess he was the vice-president then.

884 Q. Between your brother and Theodore Regensteiner they practically owned the Regensteiner Colortype Company?

A. What is that?

Q. Your brother and Theodore Regensteiner jointly are practically the owners of the Regensteiner Colortype Company?

A. No, that is not true.

Q. There are other stockholders?

A. There are.

Q. Your brother and Regensteiner own a majority of the capital stock in the Company?

Mr. Miller: Is that material, your Honor?

The Court: I don't know. Why is it?

Mr. Jacobson: I want to get it in this record.

The Court: Aside from fixing it so that we will have some place to get the money, I think it is a pretty good concern.

Mr. Jacobson: That their business association is so close that both of them own and control that Company.

The Court: Suppose they do. What of it?

Mr. Jacobson: I wanted to fix the interests of the parties to this case. I don't think it is important.

The Court: How does it affect the interests of anybody in this case? You mean the credibility of this man here?

Mr. Jacobson: No, your Honor. If we can show that Theodore Regensteiner and I. Grollman jointly own some firm, and that this man is related to him as brother, and that between them they own that firm practically, I think it would go to a greater extent in showing his interests.

The Court: Whose interests?

Mr. Jacobson: The witness' interest.

The Court: Then it is credibility.

Mr. Jacobson: It is the credibility of this witness, and his interest in this suit.

The Court: Now, as I said awhile ago, I have not been here so

long that I cannot remember that when I practiced law I knew that if there is one thing that a lawyer has an interest in, it is seeing that a thing that he O. K.'s turns out well. Now, beyond that you cannot add anything to a lawyer's interest, if he is a conscientious lawyer. We won't waste any time if it is just credibility, and you needn't spend any more time on it. Whether it affects a lawyer's veracity when he gets in the witness chair, is another thing. That is something for argument, dealing with the question of interest.

885 There isn't any higher interest. It is higher than the client's, or theoretically it is higher than the client's interest in the outcome of the suit. Go ahead.

Mr. Jacobson:

Q. Do you know whose checks were on the table in Marcuse & Company, on June 30th, 1917?

A. Well, not from an examination of the checks.

Q. Now, do you know now? Is your memory about that transaction on June 30th, 1917, as you sit there now, so clear that you can tell us the checks you saw that day, and the amounts of them?

A. No, I cannot tell you whose checks were there that day.

Mr. Jacobson: That is all. I would like to ask Mr. Hoffman one more question on cross-examination.

The Court: Are you through with this witness?

Mr. Jacobson: Yes, your Honor.

RICHARD YATES HOFFMAN, being recalled for further cross-examination by Mr. Jacobson, testified as follows:

Q. Mr. Hoffman, you stated before that you didn't remember now what checks were at Marcuse & Company on June 30th, 1917. That is correct?

A. I think that is what I stated.

Q. That is in spite of the fact that you sat here Monday, Tuesday, Wednesday and today, and you have seen these checks offered in evidence?

A. Mr. Jacobson, I think I stated——

Q. So that in spite of that fact——

A. Let me answer the question in my own way, please. I believe that I stated that the checks now in evidence are the checks that were there.

Mr. Jacobson: May I have an answer to this question?

The Court: You have got it in the record here that he has sat here during all this time, and the record shows these checks have been back and forth, trotting and pacing back and forth between that table and the witness chair. Now, it is a quarter to seven. This thing that you are putting to him is an argument.

Mr. Jacobson: Well, that is all.

The Court: I don't say how good, but it is an argument.

Mr. Jacobson: That is all I wanted to ask of the witness.

886 Mr. Miller: That is all. We rest.

Mr. Jacobson: I will ask you to produce the statement that Mr. Zuncker received from Marcuse & Company for January, 1918, that you had in court.

(The statement referred to was produced by Mr. Miller.)

Mr. Jacobson: Now, I will ask you to also produce a statement for the same period, given either to Scott Brown or Studebakers by Marcuse & Company, or mailed to them or sent to them.

(The document referred to was produced by Mr. Miller.)

Mr. Jacobson: We offer in evidence as petitioners' Exhibit 39 the statement of Marcuse & Company furnished by counsel for P. M. Studebaker, which is now offered in court and will read the line on that statement that is pertinent. Under "January 18"—the year is not here, but we have proven, I believe, it was 1918, the following notation appears on this statement in connection with the other matter there: "Four per cent on capital, \$1,000." And there is \$1,000 deducted from the previous balance, and interest is credited upon that, \$1,000. And a further memorandum with respect to it, and the entire amount is carried out in the total.

Mr. Gesas: And that *that* is an item of credit to the account.

Mr. Platt: I want to state to the Court that when I cross-examined Mr. Zuncker I supposed that he had received this amount in a check. I have found out that he received it as a credit on his account. I was not attempting to mislead him by my cross-examination.

Mr. Miller: I don't know whether your Honor had that in mind or not, but the four per cent dividend, a portion of it went to

887

Pat. Ex. 39.

P. M. Zunker in Account with Marcuse & Company, Chicago.

Date.	Dr.	Cr.	Dr.	Cr.	Dr. balance.	Cr. bal- ance.	Days.	Dr. inter- est.	Cr. in- terest.
Dec. 31.	Bal.		200 St. Paul "Short"		54,639 03	..	3	15 21	....
	100 Am. Tob. 1,000 Ore. ....				.....	..	..	..	....
	1,500 " " Scrip 300 Willys O. ....				.....	..	..	..	....
	300 So. Pac. 50 New Ely Cust Cop. ....				.....	..	..	..	....
	100 Goodrich 2,000 " " Scrip. ....				.....	..	..	..	....
	200 Insps. 400 Sinclair. ....				.....	..	..	..	....
Jan. 2.	200 Wab. A. 31 1/2% ....				.....	..	..	..	....
	100 Ct. Nor. Pfd. 94 3/4% ....				.....	..	..	..	....
	400 St. Paul 39% ....				.....	..	..	..	....
	200 New Haven 38 3/8% ....				.....	..	..	..	....
6.	.....		Div. 300 So. Pac. 1 1/4%		92,276 53	..	4	61 58	....
18.	.....		Cash.		92,201 53	..	12	154 40	....
20.	.....		4% on Capital.		91,201 53	..	2	30 40	....
27.	.....		.....		106,301 53	..	7	184 60	....
31.	Int.		Div. 200 Inspn. 200.		108,401 53	..	4	70 93	....
			Bal. ....		.....	..	..	450 06	....
					106,952 43	..	..	40 84	....
Jan. 31.	Bal.		106,257 43		108,657 43	..	31	530 90	....
	100 Am. Tob. 1,000 Ore.		106,952 43		.....	..	..	..	....
	100 Goodrich. ....				.....	..	..	..	....
	200 Inspn. 400 Sinclair. ....				.....	..	..	..	....
	200 Wab. A. 100 Ct. Nor. Pfd. ....				.....	..	..	..	....
	600 St. Paul 200 New Haven. ....				.....	..	..	..	....

888 Zuncker, instead of a check being given to him it was credited to his account.

Mr. Jacobson: The point is, it is a credit on the capital.

The Court: Have you some evidence, Mr. Platt?

Mr. Platt: I have, but it is very brief.

Thereupon an adjournment was taken until 8:25 o'clock P. M. of the same day.

Thursday Evening Session.

May 13 1920—8.15 p. m.

In re MARCUSE & COMPANY, Bankrupt.

Landis, J.

Court met pursuant to adjournment.

Mr. Platt: Is Mr. Hoffman here? There is just one matter I haven't noticed. In connection with the testimony of Mr. Hoffman given on the 29th of March he made one statement which I did not remember he had made but which I think he would be willing to correct, in connection with that original conference about the first agreement. He said, "I think Mr. Hecht was represented by the firm of Mayer, Meyer, Austrian & Platt."

Mr. Miller: You mean of April 2nd?

Mr. Platt: Yes. I am quite sure Mr. Hoffman would not adhere to that statement.

Mr. Miller: Well I will say this, on our general information and what I have learned from my investigation of the case generally I do not think that Mr. Hecht was represented at that first conference by your firm.

Mr. Platt: It is certain that he was not. I didn't know—you will remember Morris said that he was, and then Morris took it back very speedily. I didn't know that Mr. Hoffman had ever made that statement until Mr. Meyer had called it to my attention a few minutes ago.

The Court: You may put him on for a question, if you desire.

Mr. Platt: That is all I wanted to do.

Mr. Miller: I am willing to say for the benefit of counsel that as the result of my research and investigation and preparation of the case I have found no evidence to indicate that that was the
889 fact, and I shall not claim in any discussion that that was the fact.

Mr. Platt: For the permanent records I would like to have it appear affirmatively.

The Court: You may call him.

Mr. Jacobson: Your Honor, on behalf of the petitioners it is agreed that Mr. Vette received a statement from Marcuse & Company covering the period of 1919, that in that statement there was a notation of four per cent, a credit of one thousand dollars to Mr.

Vette with a statement, "four per cent on capital" and that the statement if produced in evidence would show substantially the same information that the Zuncker statement shows, Petitioner's Exhibit 39, on that subject.

JOSEPH M. FINN, hereto called as a witness and sworn, was recalled and further testified as follows:

Examination by Mr. Platt:

Q. Mr. Finn, did Mr. Ezra Cohn of the firm of Stein, Mayer & David, or any other person connected with the firm of Stein, Mayer & David, at any time before the 11th of March, 1920, ever communicated to you in any way any information regarding any claim that had been made that there was any defect in the papers relating to the limited partnership?

A. No.

Q. Did you ever hear from any source whatsoever prior to the 11th day of March, 1920, that any person claimed that there was any defect in connection with the execution of the papers relating to the limited partnership or that any person claimed that you were a general partner in the firm of Marcuse & Company?

A. No.

Mr. Platt: I have, if your Honor please, the original typewritten tender in connection with the tender of \$46,000.00 as of March 17, 1920, signed by Frank A. Hecht and Joseph M. Finn and bearing the statement, "The original of above served on us March 17, 1920, Central Trust Company of Illinois, Receiver, by W. T. Abbott, Vice-President." May I offer that without proof of Mr. Abbott's signature? I suppose it will not be disputed by anybody.

890 Q. Well, had you ever heard, just to make my first question more explicit, I intended to make it general to save time, had you ever heard that Mr. Leo Wormser, or any clients that he represented, were making any such claim about the limited partnership?

A. I did not. I never heard it from anybody.

Mr. Platt: May I have this letter marked Finn Exhibit 1? I called it a letter. It is a communication to the Central Trust Company, Receiver.

Which document was duly marked Finn Exhibit 1, and is in words and figures as follows, to-wit:

Finn Ex. 1.

[Omitted, printed p. 87.]

891 Mr. Platt: Did you, Mr. Finn, go over with me to the Central Trust Company of Illinois, at its office in Chicago, on the 17th of March, 1920, and tender to Mr. Abbott as the execu-

tive officer of the Central Trust Company, Receiver, appointed by this Court, the sum of \$46,000.00 in currency?

A. I did.

Q. And who furnished that currency?

A. I furnished \$23,000.00 and Mr. Hecht furnished \$23,000.00.

Q. By Mr. Hecht, you mean Mr. Frank A. Hecht?

A. Mr. Frank A. Hecht.

Q. And prior to making that tender had you gone over to the Chicago Title & Trust Company and obtained from their records the full amount that had been transmitted to them by Marcuse &

Company in payment of the supposed profits and interest
892 on the contribution of the special or limited partners to the capital of that company?

A. I did.

Q. And you computed interest from the date of the respective payments at five per cent per annum?

A. I did.

Q. Down to the 17th of March, and added some small amount to cover the possible errors, is that correct?

A. That is correct.

Q. Mr. Finn, I think perhaps one of my questions was not sufficiently broad. Did you compute in computing this sum of \$46,000.00 not only the amount which had been paid through the Chicago Title & Trust Company but this four per cent that had been paid directly to the parties?

A. Yes, I added that to it.

Q. And your computation included what had been paid to all these other contributors to the fund, to use an inoffensive term, as well as what you and Mr. Hecht received?

A. I did.

Q. The 17th of March was the date when that tender was made. Do you know when Mr. Frank A. Hecht came to town from the south?

A. It was either that day or the day before, I think.

Q. I would state, if my statement may be made, that it was the late afternoon of the day before, if that statement will be accepted.

Mr. Miller: It is accepted by us.

Mr. Platt: That is all, Mr. Finn.

Examination by Mr. Moses:

Mr. Moses: May I ask a few questions, if the Court please. When you were served with process in these two Municipal Court cases——

Mr. Platt: Pardon me Mr. Moses. Your records show only one case that he was served.

Mr. Moses: That is true.

Q. In the one case that you were served you delivered that summons, did you, to Stein, Mayer & David's office?

A. I delivered it to Mr. Elias Mayer.

Q. To Mr. Elias Mayer, as your counsel in that matter?

A. That is correct.

893 Q. And they continued to act as your counsel until what time?

A. In that particular case they are still my counsel.

Q. And generally in the Marcuse & Company matters did they remain your counsel?

A. The- were my counsel in the Marcuse & Company matter before the failure.

Q. Before the failure?

A. Yes.

Q. Up to the time of the failure?

A. Yes.

Q. You mean from the time that you first consulted Mr. Stein about the matter down to March 12, 1920?

A. I would say yes.

Mr. Moses: That is all.

Examination by Mr. Peters:

Q. I would like to ask Mr. Finn a question, please. Mr. Finn, this tender that was offered in evidence, this Finn Exhibit 1 recites that the tender is made on behalf of Frank A. Hecht and yourself as trustees under the trust agreement on behalf of all the beneficiaries under said trust agreement. May I ask by what authority you made a tender on behalf of the beneficiaries under the trust agreement?

A. On the advice of my attorney.

Q. Did you have any conversation with any of the beneficiaries under the trust agreement with reference to making that tender.

A. I did not.

Q. Do you know whether or not any one on your behalf had any such talk or conversation?

A. I didn't understand the question.

Q. Do you know whether your attorney, or any one acting for you had any talk or any conversation with any of the beneficiaries under that trust agreement?

A. I do not.

Mr. Miller: That is hearsay, your Honor, unless he was present and knows of his own knowledge.

Mr. Peters: He has answered he does not know.

Mr. Miller: I beg your pardon. I did not catch his answer.

894 Mr. Peters: Did you apply to any of the beneficiaries under the trust agreement for a contribution to that tender?

A. I did not personally.

Q. Except Mr. Hecht.

Mr. Platt: No. He said he did not personally.

Mr. Peters: Yes.

Mr. Miller: You can get Mr. Miller to agree that none of his clients did contribute anything to that \$46,000.00.

Mr. Peters: Will you further agree that they were solicited by Mr. Platt to make a contribution to that tender and declined to do so?

Mr. Miller: I won't stipulate anything of that kind with you, because I don't think it is material at all.

Mr. Moses: The question is not whether it is material. The fact is all we want. The question of whether it becomes material hereafter is a matter for argument.

Mr. Peters: Of course we don't want to put Mr. Platt on the witness stand if it can be avoided.

Mr. Miller: I won't make that stipulation. I will make the other stipulation with you, but I won't make that one.

Mr. Peters: That is all I have to ask Mr. Finn.

Examination by Mr. Platt:

Mr. Platt: Mr. Finn, I have in my hand the Lachman Petition filed in this case on the 15th of March, 1920, in which it is charged that the special partnership or limited partnership was improperly or insufficiently organized. Was that petition brought to your attention on or about the date it was filed?

A. What date is that?

Q. 15th of March, two days before you made the tender.

A. I cannot answer that, whether it was brought to my attention.

Q. Was it that matter that was called to your attention which resulted in making this tender?

A. Yes. I remember that was brought to my attention.

Mr. Platt: That is all.

Mr. Jacobson: Your Honor, may it be considered as part of our cross-examination that Mr. Finn was examined by this Court on March 29, 1920, and in that examination he was asked the questions as they now appear in the transcript of that examination that he made those answers under oath?

895 Mr. Platt: We are entirely willing.

Mr. Jacobson: All of which is shown in the transcript we have used for other examinations.

Mr. Platt: That is all, Mr. Finn.

(Witness excused.)

Mr. Platt: Now, if the Court please, may I make this statement and may it go *into* the record. I am not asking the counsel to concede what Frank Hecht would testify to or that he would testify to anything, but I do ask if my statement may be accepted—I think the fact is known to these gentlemen—that Frank Hecht is in such a critical condition of health that we are advised by his physician and that it appears plain to us of ourselves that to submit him to even a brief examination might be fatal. He has a blood pressure of from 220 to 243. He is up and around part of the time, every few days, although contrary to his doctor's orders, and brief conversation

brings him gasping for breath, and as his counsel we have decided that we cannot take the responsibility of submitting him to an examination. I make that statement so that it will not appear that he did not come and testify simply because it was our volition that he should not take the stand. If that is a statement of which I think is known to you gentlemen, may that be agreed upon?

Mr. Miller: As far as I am concerned.

Mr. Jacobson: We also agree.

Mr. Platt: That is all we desire to offer.

Mr. Moses: I think we will have to call Mr. Platt, if your Honor please, to prove this other fact, if we may, if Mr. Miller will take his statement.

Mr. Miller: I would take Mr. Platt's statement not under oath as quickly as I would under oath.

Mr. Platt: If I am to make a statement on a matter that is controverted I would rather be sworn than to stand here and make it.

The Court: Swear the witness, Mr. Gregory.

HENRY RUSSELL PLATT, having been first duly sworn, testified as follows:

Examination by Mr. Moses:

Q. Your full name?

A. Henry Russell Platt.

Q. Your occupation?

896 A. I am a lawyer, practicing at the Chicago bar.

Q. You represent Frank A. Hecht, Senior, and Joseph M. Finn?

A. The firm of Mayer, Meyer, Austrian & Platt represents Mr. Hecht and Mr. Finn, and I have been active in the conduct of the matter.

Q. Have you made any requests upon either Messrs. Vette and Zuncker or their counsel, Theodore Regensteiner or his counsel, Richard Yates Hoffman or his counsel, Clement Studebaker, Junior, and George M. Studebaker, for contributions for the purpose of making a tender of the profits received by the Hecht-Finn trust out of the copartnership business of Marcuse & Company at any time?

A. I had conversations upon that subject with Mr. Donald Defrees, Mr. George W. Miller and Mr. Louis Grollman. I had conversation with Mr. Donald Defrees and Mr. Miller before the time that I took the money over to Mr. Abbott, and I think I had a conversation with Mr. Louis Grollman before that. It may have been in the afternoon of the same day.

Q. What was the substance of that conversation or those conversations?

Mr. Miller: Objected to as immaterial.

The Court: Overruled.

A. I stated to Mr. Donald Defrees and to Mr. George W. Miller that I thought the proper protection of our clients' interest demanded

the renunciation of all interest in the assets and profits of the firm of Marcuse & Company, and that I thought that renunciation could only be properly evidenced by the return of all moneys that had been paid to any of the contributors to that fund, and I proposed immediately on behalf of my clients to make the tender and that I would like authority to make it on behalf of the contributors to the fund, that I thought it was essential for the protection of the contributors to the fund that it should be made on their behalf, and that I would very much like the contributions from them returned by them of the amounts which they had received.

Mr. Moses: What did Mr. Miller reply to that request?

A. Mr. Miller said that he did not propose, did not think it best to make any contribution and that he was unwilling that I should assume to act on behalf of the clients that he represented. I had prepared a typewritten statement to be addressed to the Company in which there was something, the exact wording of which

897 I do not remember but which said, I think, that by the authority or with the consent of the other contributors, and he protested that I had no right to put that in and I struck it out.

Q. Whom did Mr. Miller represent in talking to you according to your information?

A. Mr. Miller represented Mr. Zuncker and Mr. Vette as counsel in the case, and I assume he represented them when he was talking to me.

Q. What was your talk with Mr. Defrees?

A. Mr. Defrees was with Mr. Miller at the time, and my talk was addressed to the two. I think Mr. Miller was the spokesman for the two in the talk, but Mr. Miller said in substance that he took the same view of the course of conduct on behalf of his clients that Mr. Miller had expressed for his.

Mr. Meyer: You mean Mr. Defrees?

A. I mean Mr. Defrees.

Mr. Moses: What was your talk with Mr. Grollman?

A. Why I told Mr. Grollman that I thought it was very essential that this money should be repaid and that I was anxious that Mr. Regensteiner should contribute to it, and Mr. Grollman said he had no authority in the matter. Mr. Regensteiner he said, was in California, and I asked him to wire him.

Q. Whom did Mr. Defrees represent at that time according to your information?

A. Mr. Defrees represented Mr. Hoffman and the interests Hoffman represented, whatever those might be.

Q. Did you communicate with Mr. Regensteiner personally at any time?

A. I had a talk with—the first time I ever saw Mr. Regensteiner was in the court room in March, and I have had two conferences with him since.

Q. Well, with respect to making contributions toward the return of this money, these profits that he had received?

A. I don't think I have asked Mr. Regensteiner personally to make any contributions specifically as to this \$46,000.00. I had

several communications with him in regard to making contributions generally to the situation.

Mr. Moses: That is all.

898 Examination by Mr. Meyer:

Q. When you said in your direct examination, referred to the contributors to this fund, you referred to this fund of \$190,000.00, did you not?

A. I referred to the fund of \$190,000.00 contributed in the names of Joseph M. Finn and Frank A. Hecht, what was supposed to be the limited or special partnership of Marcuse & Company.

Mr. Meyer: That is all.

Examination by Mr. Miller:

Q. I did not assume to represent anybody in my conference with you except Mr. Zuncker and Mr. Vette, did I?

A. No one else.

Q. Do you remember my saying to you that from my viewpoint the men I represented were not limited or special partners of the firm?

A. I remember your saying that.

Q. Do you remember my also saying to you that as counsel for Messrs. Hecht and Finn who were the trustees under the so-called Hecht and Finn trust agreement, you would have to assume the responsibility of deciding for yourself whether they should make that tender on their own behalf alone or whether it was their duty as trustees to make the tender not only on their own behalf as limited partners but on behalf of all the certificate holders?

A. I don't remember the details of that statement, Mr. Miller.

Q. Well, the substance of that.

A. I think it is quite possible that you said that, although part of it didn't impress itself on my recollection.

Q. Don't you recall that I said to you that I would say nothing one way or the other as to whether you should or should not make the tender simply on behalf of Hecht and Finn alone or on their behalf as individuals and as trustees for the certificate holders?

A. I don't remember your saying that, Mr. Miller.

Q. You don't remember that?

A. No. I remember something that might perhaps be construed as bearing upon that subject.

Q. Didn't I say that to you in substance?

A. Well, my recollection, Mr. Miller, is——

899 Q. Didn't I say that to you in substance?

A. You said part of it to me in substance.

Q. Didn't I say to you——

A. And I don't say that you didn't say it all in substance. I say I don't recollect all of it, Mr. Miller.

Q. Didn't I say to you that I would not assume any responsibility

whatever by way of advising or suggesting as to what you should do, but that you must decide that for yourself?

A. No. I don't think you said that Mr. Miller, because you certainly did advise or insist upon my striking out a few words out of the proposed——

Q. You had a phrase in there or a line or so in there to the effect that you were making that tender by authority of the beneficiaries under the trust, didn't you?

A. I don't remember whether the word "authority" was used, but that was either "authority" or "consent."

Q. That is what it meant?

A. Yes.

Q. And didn't I say to you that if you did make that statement you would have to do it on your own responsibility for I could neither advise you to make it that way nor give you consent to make it that way.

A. Well, you said that you couldn't or wouldn't give me any consent and as far as the clients you represented were concerned that such a statement would not be accurate, or something of that sort.

Q. Didn't I also say to you that it would have to be made, if you did make it, on your own responsibility?

A. I don't remember. You said I would have to make the tender, if I made it, on my own responsibility.

Q. Do you recall——

A. I don't pretend to remember every word of the conversation, Mr. Miller.

Q. Do you recall Mr. Donald Defrees suggested to you that the position that I took in connection with the matter was substantially his position too?

A. Yes I do recall that.

Mr. Miller: Now you know what took place between Mr. Platt and Mr. Grollman. I don't know. May I speak to Mr. Grollman for just a moment? As to Donald Defrees I do know because we were there together.

(Confers with Mr. Grollman.)

Mr. Miller: Was Mr. Grollman's position this, that his
900 client, Mr. Regensteiner, was in California, he had had no opportunity to confer with him about the matter and he felt he had no authority to act one way or the other with you?

A. He said he had no authority in the matter.

Mr. Miller: That is all.

The Court: Any proof from any other source here?

Mr. Miller: We are through.

The Court: Are you ready to argue this matter?

Mr. Platt: Yes, your Honor.

Mr. Miller: Are you gentlemen all through? Mr. Jacobson and everybody, all through?

In the Matter of MARCUSE & COMPANY, Bankrupts.

Landis, J.

Monday, May 17, 1920—5 o'clock p. m.

Court met pursuant to adjournment.

Mr. Platt: Before Mr. Miller proceeds with his argument I desire to do something which I very rarely do, and that is in the midst of argument to ask leave to introduce certain further evidence. I make this motion at this time with the less reluctance because the evidence is entirely documentary, because its existence must have been known, or because the papers bear the signature of the clients of the gentleman who is making the argument, because their existence must have been known to the firm of Foreman, Robertson & Blumrosen, because they were drawn in their office, so that it is no surprise to the gentlemen on the other side.

I deem it my duty to call the Court's attention to their existence because I believe their contents to be totally inconsistent with the evidence given by Mr. Peter M. Zuncker upon the stand and because I believe them to be entirely inconsistent with the theory upon which counsel is arguing the case.

I have in my hands, if your Honor please—and I say that I never heard any intimation of the existence of any such documents, and

I am sure none of the other counsel on my side of the case
901 heard of them, until after the adjournment of court on Friday, and in fact until the afternoon on Saturday; that the knowledge that the papers were actually in existence did not come to me until the afternoon today, and I was only able to reach my colleagues, some of them, since we came into the court room.

I hold in my hands one agreement between Ben Marcuse and Peter M. Zuncker, bearing date the 28th day of March, 1917, in which Marcuse guarantees Zuncker against any loss in connection with the then special partnership, agrees to buy back his interest at any time after the expiration of a year from that date, I think it is, with interest at six per cent, and agrees to give Mr. Zuncker a proportionate interest in any future brokerage business that Mr. Marcuse might enter into after the termination of that special partnership, and I hold in my hands an agreement—these are all in the cover of Foreman, Robertson & Blumrosen—dated on the typewriter the 1st day of July, 1917, but that changed in pen and ink to the 30th day of June, 1917, wherein it recites that Frank Hecht and Finn have executed and delivered their certain declaration of trust wherein they have covenanted and agreed to hold their interest of said special partners in trust ratably for the holders of certain trust certificates, and so forth, and recites that Marcuse has requested Zuncker to pay into said trust a sum of \$25,000 and accept the certificates of said trust fund. Zuncker agreed to do it upon the execution of this document, and in consideration of the premises Marcuse

agrees at any time after April 1, 1919, upon request of Zuncker, to buy back the \$25,000 certificates, together with six per cent interest thereon from April 1, 1917, together with the ratable proportion to which the holder of said certificate shall be entitled to any profits which may have then accrued to said trust, less whatever sums which have been paid to said Zuncker upon said certificates; second, Marcuse agrees at any and all times hereafter fully and completely to indemnify and save harmless Zuncker from any and all liability on account of any obligations of Marcuse & Company; and, third, agrees that if, after the termination of the business of the co-partnership known as Marcuse & Company, Marcuse shall continue in the brokerage business, either individually or in connection with any new enterprise, Zuncker shall, at his option, upon contributing to the capital of said new enterprise the sum of \$25,000, be entitled

902 to, and Marcuse guarantees that he shall receive, the same proportionate interest in said new enterprise, by way of interest payments and distribution of net profits, as he will through said trust be entitled to receive out of the business of the firm of Marcuse & Company, with some additional provisos that if less amounts are contributed his amounts shall be diminished.

These papers, signed by Peter M. Zuncker and Ben Marcuse, the ones relating to March 28, which have been mutilated by tearing off part of the signatures, as the others were, are counterparts of others signed by Henry Vette. The signatures, I apprehend, will not be denied. Your Honor has in evidence the checks, and so forth, which will enable your Honor to determine that these are the genuine signatures, and I ask permission of the Court to re-open the case for the purpose of offering in evidence these agreements which, as I have said, seem to me entirely inconsistent with the testimony of Zuncker and possibly of one of his counsel; certainly of Zuncker,—and your Honor is, I think, sufficiently familiar with that testimony so that I do not need to recall the particular sections to your attention which I think are inconsistent with the existence of these documents.

Mr. Miller: As to the four documents, I object to them, first, upon the ground that this case has proceeded to the point where the record should not be opened. As to two of them——

The Court: On that the only question is whether or not—where had these documents been?

Mr. Platt: If your Honor please, these documents which I bring into Court have been in the possession of the firm of Stein, Mayer & David. Mr. Marcuse disclosed to his client, Mr. Wormser—to his counsel, Mr. Wormser, sitting here in the court room last Friday that he remembered that he had signed some agreements with Vette and Zuncker. He didn't know whether Vette and Zuncker had signed them or not, and he didn't know whether he had any copy of them. Mr. Wormser brought to my office Saturday afternoon an unsigned copy which Marcuse said was written on the paper of Robertson and Blumrosen, although there was nothing on the paper to show it. I began today to investigate, and had a conference

myself for the first time with Marcuse. I say the first time—the first time on this subject. He said possibly—he didn't know who—but he said he remembered signing them and delivering them 903 at Mr. Foreman's office—possibly Mr. Stein and Mr. Mayer had a copy, and I went over to Mr. Mayer's office, and Mr. Mayer said since he had been in New York he had told his clerks to look for everything they could find, and his clerks had dug up some additional papers which he would send for and have brought in. There was a file brought in, or there was a file on the side table, and these papers were among them. As I say, until the afternoon on Saturday I never heard a suspicion that there were any such documents, and I discovered the existence of the fact they bore these signatures the afternoon today.

Mr. Miller: As to the two documents which are dated in March, 1917, I object to them for the further reason that they show upon their face that they are cancelled documents; the signatures have been torn off. As to the other two documents, those which bear date June 30, 1917, I object to those documents upon the ground that they are wholly immaterial.

The Court: The Court has already passed on these objections in other matters, except the first objection. I always let in anything, unless there is an appearance or a reasonable suggestion that injustice is going to result from letting it in after the close of the case. I don't see that there is anything of that kind in your objection. I don't get any suggestion of that kind from you.

Mr. Miller: Oh, no, the Court—

The Court: They appear to deal with the general subject matter here.

Mr. Miller: If my theory of the law is right—there is no jury here, and the Court can, of course, lay out of consideration these documents, as I have urged you to lay out of consideration these other ones.

The Court: The only thing I have in my mind is the fact they are now tendered, and your objection doesn't suggest anything or any injustice in my allowing them to go in, that is, any unfairness merely in their being tendered now, and your adversary makes a showing that acquits him of negligence in not presenting them before.

Mr. Miller: I think that the right to let them in now is a right which is vested in the sound discretion of the Court. Of course, I must say that—

The Court: I will let them in.

Mr. Miller: —because I believe that to be the law.

Mr. Platt: Mr. Jacobson, do you know the number of the exhibits?

904 Mr. Jacobson: Yes, sir. These are offered as Hecht's Exhibits 2—

Mr. Miller: Your Honor, it is nine minutes to six. What time were you going to adjourn before dinner? I was just wondering, in view of the lateness of the hour, whether you might deem it wise to let us take the dinner hour now.

The Court: I will let you decide that. What have you gentlemen on the other side in mind as to the matter of time?

Mr. Platt: Not more than a few minutes for each hour that Mr. Miller has taken.

The Court: We will suspend now until seven o'clock.

Mr. Jacobson: Your Honor, I would like to state in the record that none of the petitioners, nor any counsel for petitioners, had any knowledge of these other than what Mr. Platt had.

Hecht's Exhibit No. 2 is the Vette agreement of March 28, 1917, Exhibit No. 3 is the Zunker agreement of March 28, 1917, Exhibit No. 4 is the Zunker Exhibit of June 30, 1917, and Exhibit No. 5 is the Vette agreement of June 30, 1917; and we also offer them as Petitioners' Exhibits 40 to 44, both inclusive, in the same order.

(Whereupon said documents were received in evidence, marked Hecht's Exhibits 2, 3, 4 and 5, respectively, and were and are in words and figures as follows, to-wit:)

(Hecht Ex. 2.)

Agreement Between Ben Marcuse and Henry Vette.

Dated March 28th, 1917.

Foreman, Robertson & Blumrosen, First National Bank Building,
Chicago.

This Agreement, made and entered into this twenty-eight day of March, 1917, by and between Ben Marcuse, party of the first
905 part (hereinafter for brevity called "Marcuse"), and Henry Vette, party of the second part (hereinafter for brevity called "Vette"),

Witnesseth:

That, Whereas, Marcuse has requested Vette to become a special partner in the firm of Marcuse & Company, and Vette has agreed to do so upon the execution hereof,

Now, Therefore, in consideration of the premises and of the execution by Vette of the special partnership contract, creating the firm of Marcuse & Company, it is agreed by and between the parties hereto as follows:

First, Marcuse agrees at any time after the expiration of one year from the date of execution of said special partnership contract, upon request of Vette, and the tender by Vette to Marcuse of an assignment of all the interest of Vette in and to the business of Marcuse & Company, to pay to said Vette the sum of Twenty-five Thousand (\$25,000.00) Dollars, together with six per cent (6%) interest thereon from the date of the execution of said special partnership contract, together with any profits which may have accrued to said Vette from the firm of Marcuse & Company, less whatever sums have been paid to Vette out of the business of said Marcuse & Company, and thereupon to indemnify Vette against any and all liability on account of any obligations of Marcuse & Company.

Second, Marcuse agrees that, if after the termination of the business of the copartnership known as Marcuse & Company, said Marcuse shall continue in the brokerage business, either individually or in connection with any new enterprise, said Vette, upon contributing to the capital of said new enterprise, the sum of Twenty-five Thousand (\$25,000.00) Dollars, shall be entitled to (and Marcuse guarantees that he shall receive) the same proportionate interest in said new enterprise by way of interest payments and distribution of net profits as he becomes entitled to in the firm of Marcuse & Company under said special partnership contract; provided, that if the capital of said other firm shall be less than the capital of Marcuse & Company, the amount which Vette shall be required to contribute to the capital if said other firm shall be proportionately reduced.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written. Ben M. Henry V.

906

(Hecht Ex. 3.)

Agreement Between Ben Marcuse and Peter M. Zuncker.

Dated March 28th, 1917.

Foreman, Robertson & Blumrosen, First National Bank Building,
Chicago.

This Agreement, made and entered into this twenty-eighth day of March, 1917, by and between Ben Marcuse, party of the first part (hereinafter for brevity called "Marcuse"), and Peter M. Zuncker, party of the second part (hereinafter for brevity called "Zuncker"), Witnesseth:

That, Whereas, Marcuse has requested Zuncker to become a special partner in the firm of Marcuse & Company, and Zuncker has agreed to do so upon the execution hereof,

Now, Therefore, in consideration of the premises and of the execution by Zuncker of the special partnership contract, creating the firm of Marcuse & Company, it is agreed by and between the parties hereto as follows:

First. Marcuse agrees at any time after the expiration of one year from the date of execution of said special partnership contract, upon request of Zuncker, and the tender by Zuncker to Marcuse of an assignment of all the interest of Zuncker in and to the business of Marcuse & Company, to pay to said Zuncker the sum of Twenty-five Thousand (\$25,000.00) Dollars, together with six per cent (6%) interest thereon from the date of the execution of said partnership contract, together with any profits which may have accrued to said Zuncker from the firm of Marcuse & Company, less whatever sums have been paid to Zuncker out of the business of said Marcuse & Company, and thereupon to indemnify Zuncker against any and all liability on account of any obligations of Marcuse & Company.

Second. Marcuse agrees that, if after the termination of the business of the copartnership known as Marcuse & Company, said
907 Marcuse shall continue in the brokerage business, either individually or in connection with any new enterprise, said Zuncker, upon contributing to the capital of said new enterprise, the sum of Twenty-five Thousand (\$25,000.00) Dollars, shall be entitled to (and Marcuse guarantees that he shall receive) the same proportionate interest in said new enterprise by way of interest payments and distribution of net profits as he becomes entitled to in the firm of Marcuse & Company under said special partnership contract; provided, that, if the capital of said other firm shall be less than the capital of Marcuse & Company, the amount which Zuncker shall be required to contribute to the capital of said other firm shall be proportionately reduced.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written. Ben Ma. Peter M. Z.

(Hecht Ex. 4.)

Agreement Between Ben Marcuse and Peter M. Zuncker

June 30,

Dated July 1, 1917.

Foreman, Robertson & Blumrosen, First National Bank Building,
Chicago.

30th B. M.

June,

This Agreement, made and entered into this 1st day of July 1917, by and between Ben Marcuse, party of the first part, (hereinafter for brevity called "Marcuse"), and Peter M. Zuncker, party of the
908 second part, (hereinafter for brevity called "Zuncker"),

Witnesseth:

That Whereas, Marcuse has, pursuant to an agreement dated the 1st day of April, 1917, entered into a certain special partnership, wherein Marcuse and one L. H. Morris are general partners, and Frank A. Hecht and Joseph M. Finn are special partners, for the purpose of engaging in the brokerage business; and

Whereas, said Frank A. Hecht and said Joseph M. Finn have heretofore executed and delivered their certain declaration of trust, whereby they have covenanted and agreed to hold their interest as said special partners in trust ratably for the holders of certain trust certificates, according to the terms of said declaration of trust, and have procured the issuance by Chicago Title & Trust Company of certain trust certificates evidencing the right, of the holders thereof to participate in the trust fund in said declaration of trust described, said declaration of trust and said certificates constituting and creating what is therein denominated the Hecht-Finn trust; and

Whereas, Marcuse has requested Zuncker to pay into said trust the sum of Twenty-five Thousand Dollars (\$25,000.00), and accept

certificates of said trust therefor, and Zuncker has agreed to do so upon the execution hereof;

Now Therefore, in consideration of the premises and of the payment of said moneys by Zuncker, and of the acceptance by him in consideration thereof of said trust certificates, it is agreed by and between the parties hereto as follows:

First, Marcuse agrees at any time after April 1, 1918, upon the request of Zuncker, and the tender by Zuncker to Marcuse of an assignment of said certificates, to pay to said Zuncker the sum of Twenty-five Thousand Dollars (\$25,000.00), together with six per cent (6%) interest thereon from April 1, 1917, together with the ratable proportion to which the holder of said certificates shall be entitled of any profits which may then have accrued to said trust, less whatever sums shall at said date have been paid to said Zuncker upon said certificates.

Second, Marcuse agrees at any and all times hereafter, fully and completely to indemnify and save harmless Zuncker against any and all liability on account of any obligations of Marcuse & Company.

Third, Marcuse agrees that if after the termination of the business of the copartnership known as Marcuse & Company, said
909 Marcuse shall continue in the brokerage business, either individually or in connection with any new enterprise, Zuncker shall, at his option, upon contributing to the capital of said new enterprise the sum of Twenty-five Thousand Dollars (\$25,000.00), be entitled to (and Marcuse guarantees that he shall receive) the same proportionate interest in said new enterprise by way of interest payments and distribution of net profits as he will through said trust be entitled to receive out of the business of the firm of Marcuse & Company, provided, that if the capital of such new enterprise shall be less than the capital of Marcuse & Company, the amount which Zuncker shall be required to contribute to the capital of such new enterprise shall be proportionately reduced.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written. Ben Marcuse.
(Seal.) Peter M. Zuncker. (Seal.)

(Hecht Ex. 5.)

Agreement Between Ben Marcuse and Henry Vette.

June 30,

Dated July 1, 1917.

Foreman, Robertson & Blumrosen, First National Bank Building,
Chicago.

30th B. M.

This Agreement, made and entered into this 1st day of June, 1917, by and between Ben Marcuse, party of the first part, (hereinafter for brevity called "Marcuse"), and Henry Vette, party of the second part (hereinafter for brevity called "Vette").

Witnesseth:

That Whereas, Marcuse has, pursuant to an agreement dated the 1st day of April, 1917, entered into a certain special partnership, wherein Marcuse and one L. H. Morris are general partners, 910 and Frank A. Hecht and Joseph M. Finn are special partners, for the purpose of engaging in the brokerage business; and

Whereas, said Frank A. Hecht and said Joseph M. Finn have heretofore executed and delivered their certain declaration of trust, whereby they have covenanted and agreed to hold their interest as said special partners in trust ratable for the holders of certain trust certificates, according to the terms of said declaration of trust, and have procured the issuance by Chicago Title & Trust Company of certain trust certificates evidencing the right of the holders thereof to participate in the trust fund in said declaration of trust described, said declaration of trust and said certificates constituting and creating what is therein denominated the Hecht-Finn trust; and

Whereas, Marcuse has requested Vette to pay into said trust the sum of Thirty Thousand Dollars (\$30,000.00), and accept certificates of said trust therefor, and Vette has agreed to do so upon the execution hereof;

Now, Therefore, in consideration of the premises and of the payment of said moneys by Vette, and of the acceptance by him in consideration therefor of said trust certificates, it is agreed by and between the parties hereto as follows:

First. Marcuse agrees at any time after April 1, 1918, upon the request of Vette, and the tender by Vette to Marcuse of an assignment of said certificates, to pay to said Vette the sum of Thirty Thousand Dollars (\$30,000.00), together with six per cent (6%) interest thereon from April 1, 1917, together with the ratable proportion to which the holder of said certificate shall be entitled of any profits which may then have accrued to said trust, less whatever sums shall at said date have been paid to said Vette upon said certificates.

Second. Marcuse agrees at any and all times hereafter, fully and completely to indemnify and save harmless Vette against any and all liability on account of any obligations of Marcuse & Company.

Third. Marcuse agrees that if after the termination of the business of the copartnership known as Marcuse & Company, said Marcuse shall continue in the brokerage business, either individually or in connection with any new enterprises, Vette shall, at his option, upon contributing to the capital of said new enterprise the sum of

911 Thirty Thousand Dollars (\$30,000.00), be entitled to (and Marcuse guarantees that he shall receive) the same proportionate interest in said new enterprise by way of interest payments and distribution of net profits as he will through said trust be entitled to receive out of the business of the firm of Marcuse & Company; provided, that if the capital of such new enterprise shall be less than the capital of Marcuse & Company, the amount which

Vette shall be required to contribute to the capital of such new enterprise shall be proportionately reduced.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written. Ben Marcuse. (Seal.) Henry Vette. (Seal.)

The examination of Richard Yates Hoffman on March 29, 1920, before the Honorable Kenesaw M. Landis, referred to by Mr. Platt on page 593 of the record, and offered as a part of the cross-examination of Mr. Hoffman on this hearing, is in words and figures as follows, to-wit:

RICHARD YATES HOFFMAN, a witness, having been first duly sworn, testified as follows:

Examination by the Court:

Q. What is your name?

A. Richard Yates Hoffman.

Q. What is your business, Mr. Hoffman?

A. Lawyer.

Q. Where?

A. 105 South La Salle Street, Chicago, Illinois.

Q. Are you a holder of or interested in some interest of Marcuse & Company?

A. I understand now that I have no—that I am not the owner of the certificate any longer. I think it was transferred, your Honor, sometime in the early part of this year, or the latter part of last year.

Q. Who transferred it?

A. The Chicago Title & Trust Company, I imagine.

Q. At your request?

A. No.

Q. To whom?

912 A. I think the certificate is now standing in Mr. Gardner's name.

Q. Who is he?

A. He is treasurer, I believe, of the Chicago Title & Trust Company.

The Court: Issue a forthwith subpoena for Mr. Gardner.

Q. What did you pay for this certificate, Mr. Hoffman?

A. I delivered to Messrs. Hecht and Finn a check drawn to my order in the amount of \$50,000, endorsed restrictively to Messrs. Hecht and Finn, as Trustees of the Hecht-Finn Trust.

Q. Whose check was it?

Q. It was the check, I believe, of Studebaker Brothers Trust, or that is my recollection, your Honor.

Q. And who delivered it to you?

A. It was sent to me from the office of Studebaker Brothers Trust.

Q. And did you receive a certificate from this Hecht and Finn Trust?

A. My recollection is, your Honor, that I received on the date of the delivery of that check merely a receipt therefor specifying that I would get such a certificate, and that subsequently, or two or three days thereafter, the certificate did come.

Q. What did you do with it?

A. I turned it over to Studebaker Brothers Trust.

Q. Where?

A. 208 South La Salle Street, Chicago.

Q. Are they here in Chicago?

A. Yes.

Q. Who is their representative here at that office?

A. Mr. Scott Brown.

The Court: Now, is there a subpoena out for Mr. Brown?

The Clerk: Yes, your Honor.

The Court:

Q. Whereabouts is that?

A. 208 South La Salle Street.

Q. Where is your office?

A. 105 South La Salle Street.

Q. What is the business of the Studebaker Brothers Trust?

A. Well, that is pretty hard for me to say, your Honor. I do not know.

Q. Well, who are the Studebaker Brothers now?

A. Well, I do not understand the question, your Honor. Who are they?

913 Q. Who are the Studebaker Brothers? Who is the Studebaker Brothers' Trust? Who are Studebaker Brothers?

A. Yes. Mr. Clement Studebaker, Junior, and George M. Studebaker.

Q. Where do they live?

A. South Bend, Indiana.

Q. Both of them?

A. Yes, sir.

Q. Are they interested in this trust?

A. Which trust, your Honor?

Q. The Studebaker Brothers' Trust.

A. Yes, sir.

Q. I wish you would telegraph them that the Court wishes them here at half after ten tomorrow morning to enable us to get necessary information from them in connection with the Marcuse matter. Will you do that when you leave here?

A. I will be glad to, your Honor, but if I may make a suggestion—

Q. Are you the attorney for them?

A. My firm is, yes.

Q. You tell them. You see the situation we have got here.

A. I understand, your Honor. I am very glad to do as you request.

Q. The question is whether we have an examination here or institute incillary proceedings in Indiana. Just tell them we want them here half after ten tomorrow morning. Did dividends come to you from this business, whatever it was?

A. I think checks from time to time came to me, yes.

Q. What did you do with those?

A. I endorsed them in blank and sent them—or endorsed them, rather—I do not know whether in blank or not—and sent them to Mr. Brown.

Q. And you had no interest whatever in this thing, save only as you have indicated?

A. That is correct.

Q. No beneficial interest at all?

A. None.

Q. Well, was Brown living here at the time of this transaction?

A. Yes.

Q. Why didn't Brown himself have the certificate? Why wasn't it issued to him?

914 A. I do not know, your Honor.

Q. Is the Studebaker Trust a corporation, or a Massachusetts Common Law Trust, or what?

A. It is neither a corporation nor a common law trust. Simply a trust, your Honor, a trustee and fiduciaries.

Q. Now, who was the trustee?

A. The Chicago Title & Trust Company.

Q. And it is a trust created by whom?

A. By the Studebaker Brothers.

Q. The original brothers?

A. The two gentlemen whose names I have given.

Q. Those two you have mentioned?

A. Yes, sir.

Q. They are not the original Studebakers?

A. I do not know whom you mean by the original Studebakers.

Q. I mean the real Studebakers, the fellows that knew how to make a wagon.

A. No. They are no longer interested in that business, your Honor.

Q. They are the succeeding generation, are they?

A. That is correct.

Q. What did you say the names of these two men are?

A. George M.——

Q. George M. Studebaker.

A. —and Clement, Junior.

Q. You say Clement. Clement?

A. He calls himself Clement, your Honor.

Q. He does?

A. Yes.

Q. They call his father just "Clem."

A. He goes by that name mostly.

Q. He ought to be good. How much is he good for? We are looking for some assets here. Do you know about his financial worth?

A. I do not know, no.

Q. This trust you are talking about is a trust formed by the joint agreement of these two Mr. Studebakers?

A. Yes.

Q. Is anybody else a member of the trust?

A. I do not know, your Honor. I think not.

Q. How old is that agreement?

A. Oh, I should judge five years.

Q. That is with the Chicago Title & Trust Company?

915

A. Yes.

The Court: A forthwith subpoena for the Title & Trust Company to bring in the trust agreement of Clement, Junior, and—

Q. And who?

A. George M.

The Court: And George M. Studebaker. Tell the Marshal that the Chicago Title & Trust Company is a Chicago concern having an office on Washington Street.

Q. What is Mr. Brown's business, Mr. Hoffman?

A. He is a lawyer.

Q. Is he practicing now?

A. I think not. I wouldn't say he was.

Q. Is he in town today?

A. I think so, yes, your Honor.

Q. And does he devote most of his time to attending to the business of this concern—Studebaker Brothers' Trust?

A. I think he does, your Honor.

Q. What is that trust for? What is the object of that trust?

A. The Studebaker Brothers' Trust?

Q. Yes.

A. I do not know.

Q. They put \$50,000 in this Marcuse business, did they?

A. Yes.

Q. To whom did you deliver that check?

A. Messrs. Hecht and Finn.

Q. Did you have anything to do with the negotiations which preceded and led up to the drawing of that check by the Studebaker Brothers' Trust?

A. Yes. I sat in at some of the conferences.

Q. With whom?

A. With Mr. Brown, Sydney Mayer and Mr. Marcuse.

Mr. Mayer: You mean Sydney Stein.

The Witness: Sydney Stein, yes.

The Court:

Q. Who else?

A. I think Colonel Buckingham was there.

Q. Anybody else?

A. At some of those conferences, Colonel Foreman. My recollection doesn't serve me further, your Honor.

Q. Did Foreman make contributions to Marcuse & Company?

A. I think not.

Q. Who did he represent?

916 A. I think he represented Mr. Vette, if I am not mistaken.

Q. Did Vette make a contribution?

A. I do not know. I suppose he did.

Q. Well, you gentlemen sat in on a conference, you and Colonel Buckingham and Colonel Foreman. When was this?

A. Oh, there were conferences, your Honor, from the time probably that the Von Frantzius—that Mr. Von Frantzius died, from time to time up to the latter part of June, 1917, I should say.

Q. Well, in a general way, what was the enterprise that you gentlemen were conferring about? What were you trying to accomplish?

A. Well, the situation was this: The gentlemen whom I represented stood to take a considerable loss. The exact amount I do not know now.

Q. That is, the Studebaker Brothers?

A. Yes, in the Von Frantzius Estate; that is, in connection with the Von Frantzius Estate.

Q. They had been customers of Von Frantzius?

A. They had been, yes. The idea that was promulgated by Mr. Marcuse was that if he could take over the assets of Von Frantzius and develop the business based on those assets he could make a paying business out of it, a brokerage business, and in that way make enough money to pay off the claims against the Von Frantzius Estate in full. We were interested in having our claim paid in full, and, therefore, we were interested in Mr. Marcuse's suggestion. The result of those negotiations was the Hecht-Finn Trust; in other words, a trust under which the special partners, with Mr. Marcuse and Mr. Morris, should pay—should divide or should pay certain sums to certificate holders under that trust.

Q. Now, you mean when you say special partners——

A. Messrs. Hecht and Finn.

Q. Now, what were Hecht and Finn? What was the difference of their situation from that of Marcuse and Morris?

A. I do not know. I do not know whether they were creditors of——

Q. No. I mean as partners. You referred to them as special partners.

A. They were the special partners, your Honor.

Q. That is, you are referring now to the agreement drawn up in April, 1917?

A. No. Well, I am referring to the agreement which went of record. I do not know whether it was drawn up in April or later.

917 Q. How did Hecht and Finn happen to be the two gentlemen for whom this trust was named?

A. Because they were the special partners, the limited partners.

Q. What was the difference in their situation and the situation of the Studebaker Brothers Trust in their relations to Marcuse & Company?

A. Studebaker Trust, or the certificate holder under the Hecht and Finn Trust representing that interest, had no relation of any kind with the partnership in any respect.

Q. Well, what did Hecht and Finn have with the partnership?

A. They had such relation as a limited partner has to a partnership.

Q. Did you in your negotiations with these things come in contact with Mr. Marcuse?

A. No, sir. I beg your pardon. In negotiations?

Q. Yes. Preceding—

A. You mean—

Q.—the signing of this document, at these various conferences.

A. Yes, he was at the various conferences of which I spoke.

Q. Studebaker Brothers, what was their interest?

A. The protection of their claim against the Von Frantzius Estate. Possibly they would make it in full.

Q. Was this question of putting Marcuse back in business the subject of these various conferences?

A. It wasn't the subject. It was a thing that was discussed.

Q. It was the thing that resulted from these conferences?

A. It was the thing that finally worked out, yes, your Honor.

Q. Now, how was it that Studebaker Brothers Trust—how was it that they were given this trust certificate, instead of being, as Hecht and Finn were, special or limited partners, as you mention? How did that happen?

A. We didn't want to be partners.

Q. Why not?

A. I should say the Studebaker Trust didn't want to be in any respect partners of anybody in a brokerage business or any other kind of business.

Q. Was there any arrangement between Studebaker Brothers and Hecht and Finn by which your liability—or you had any
918 relationship to Marcuse's liabilities or profits?

A. No.

Q. Studebaker Brothers had a different liability, different relation to liabilities or profits of Marcuse & Company, from Hecht and Finn's relationship?

A. Our right to profits arose merely—didn't arise with respect to profits of Marcuse & Company, but we simply had the right—when I say "we" I mean the interest I represent.—

Q. Yes.

A. —Had the right to such moneys as might from time to time be distributed by Messrs. Hecht and Finn as Trustees.

Q. Trustees of what?

A. Of the Hecht-Finn Trust.

Q. In what?

A. Well, the——

Q. Well, they were trustees of what? You say the Hecht-Finn Trust. Now, what was that?

A. They were the special partners of Marcuse & Company.

Q. Yes.

A. And any amount——

Q. They were trustees of the Hecht and Finn Trust?

A. Yes.

Q. Did they have a certificate from the Hecht-Finn Trust?

A. I suppose so, yes.

Q. The amount of the certificate was \$50,000?

A. Yes, sir.

Q. Being the amount of the contribution by the Studebaker Trust?

A. Yes.

Q. To this Hecht-Finn Trust?

A. That is correct, your Honor.

Q. What was the amount of Hecht's certificate?

A. I do not know.

Q. Had you no interest in it?

A. I had no interest in what Mr. Hecht and Mr. Finn did, or what any other certificate holders did.

Q. Was the amount Hecht and Finn got out of this fund to be distributed among the holders of the certificates issued by the Hecht-Finn Trust? Did that have any bearing on how much other certificate holders should get?

A. Surely.

Q. But you say you weren't interested in that.

919 A. I will say this now in answer to your question, that I do not recollect what it was. Probably I was interested at the time, but I do not know.

Q. What was the aggregate contribution to the Hecht-Finn Trust? Yours was \$50,000, Mr. Regensteiner's was \$18,000. What was Hecht's, do you know?

A. I do not know.

Q. Or Finn's?

A. I do not recollect, except from what your Honor suggested on the stand. I think it was about \$190,000. That is my recollection.

Q. Of that the Studebaker Brothers had \$50,000?

A. Yes.

Q. Now, was there a discussion as to who should be the limited partners? How did you happen to devolve this honor upon Hecht and Finn?

A. I do not know. I only know we wouldn't have wanted to be and wouldn't have been limited partners.

Q. You do not remember how that was settled and determined.

A. I do not.

Q. Now, when did you get the last dividend check from Marcuse or from the Chicago Title & Trust Company?

A. I do not know, your Honor. It was sometime last year, when the check came to me.

Q. Mr. Regensteiner said he got one the 1st of January.

A. You understand, as I explained before——

Q. Did you get out before then?

A. Oh, yes. The certificate probably was transferred sometime—I do not know—last year, your Honor. I do not know when it was. I would never get the dividend in January, is what I mean to say.

Q. You were out before then?

A. Yes.

Q. You did get dividends, did you, from time to time?

A. Yes.

Q. What did you do with those dividends?

A. Sent them over to Mr. Brown.

Q. And I understand you have no impression as to why it was that Mr. Brown himself didn't be the holder of the certificate, why he wanted you to be the holder of the certificate?

A. Why, I do not know, your Honor. I can conceive of reasons why. I suppose that for the same reason that Mr. Studebaker
920 himself wouldn't want to have the thing in his name. No particular reason.

Q. Why? What is the reason?

A. Merely the conservatism of the average business man. I do not know any good reason or any other reason.

Q. Mr. Studebaker has some money he wants to put into the business of a rising young stock broker, and he goes to his representative, Mr. Brown, to his lawyer, Mr. Hoffman. Is there any other reason he didn't want his name mentioned in this connection?

A. None that I know of. I do not know that that was the reason.

Q. Well, have you any other reasons as to what might have been the reason?

A. No, I don't see any reason, as far as I have any knowledge of the thing. I do not see any reason why it shouldn't have been taken in his name.

Q. In so far as you know, do Studebaker Brothers hold the shares in the Studebaker Corporation, if they have any, in their own name?

A. I do not know.

Q. Have they any interest in the Studebaker corporation?

A. I do not know.

The Court: Have you any questions?

Mr. Moses:

Q. When you made the transfer of your certificate to Mr. Gardner, was it made to him for the purpose of the Studebaker Trust?

A. I do not know.

Q. Did you make it to him as trustee?

A. Let me explain, Mr. Moses.

Q. Yes.

A. When the certificate was issued to me my recollection is that I immediately assigned it in blank and sent it to Mr. Brown. That is the last I saw of it.

Q. You do not know why it was issued to Mr. Gardner?

A. No.

Q. Have you been called upon to make any contribution to any fund which has been deposited with the clerk of this court in connection with this matter?

A. I have not.

Q. Do you know whether your clients have been called upon to make any contribution?

A. My information is that they have not.

921 The Court: Well, do you represent these parties? Do you know of any lawyer being called on in this matter?

A. I do not.

Q. Representing the Studebaker Trust?

A. No.

Mr. Moses: That is all.

Mr. Platt:

Q. Mr. Hoffman, didn't you personally sign a limited partnership agreement in connection with Marcuse & Company?

A. I signed an agreement, yes.

Q. Wasn't it an agreement of limited partnership?

A. Yes.

Q. And wasn't it superseded by the new arrangement because the New York Stock Exchange rules would only permit two special partners to be named?

A. It wasn't superseded, because it never went into effect.

Q. Well, it was signed, wasn't it?

A. Yes.

Q. Signed by everybody concerned?

A. Yes.

Q. Then a new one was made?

A. It was signed and never delivered.

Q. It was signed?

A. Yes, it was signed.

Q. And a new one was made. The reason was because the New York Stock Exchange rules only permitted two names to be used as special partners, is that right?

A. I do not know.

Q. Who would know? Who participated in this exchange?

A. The man probably who had more to do with this than anyone else—in other words, he was the man upon whom devolved the necessity of taking the definite detailed steps—was Mr. Mayer,—was Mr. Stein, and—

The Court: Who is he?

A. Mr. Sydney Stein, who is now dead. He represented Mr. Marcuse as a lawyer at that time. I only know that those papers were signed hurriedly before things had got to a point where the parties had really agreed on becoming limited partners. They were signed and they were laid as against a time when the agreement would be perfected. That time never came. The next step, as I recollect it, was the information that I had that those papers would not go into effect, and that instead of that Messrs. Hecht and Finn would become the limited partners.

922 Mr. Platt:

Q. Who gave you that information?

A. My recollection is that it came over the telephone from Mr. Stein.

Q. Now, who has been representing the interest which you represented in signing that since the Marcuse & Company bankruptcy proceedings?

A. Since these bankruptcy proceedings?

Q. Yes.

A. My organization, my firm.

Q. Well, when you have spoken as to what has been done and what has not been done, what requests have been made and what have not been made, have you been speaking for your entire firm and organization?

A. How could I?

Q. That is what I wanted to know.

A. I stated definitely I did not know of anyone having been asked.

Q. Who has been actively conducting the negotiations in your firm or organization?

A. Mr. Defrees.

Q. Which Mr. Defrees?

A. Mr. Donald Defrees.

Mr. Platt: That is all.

Mr. Moses: May I ask another question?

Q. At these original conferences who represented the respective parties that had to do with the making of this agreement—what lawyers?

A. I will give you my best guess on it, Mr. Moses. That is all I can do, because I never had any relationship; none of us had any relationship one with the other. I never saw Mr. Regensteiner until today. I do not believe I would know Peter Zuncker, Finn or Hecht if they would walk in here. My recollection is that Colonel Foreman represented Mr. Vette, and I think also Mr. Zuncker. I do not know. I do not know who represented Mr. Regensteiner. I think Mr. Hecht was represented by the firm of Mayer, Meyer, Austrian & Platt. I do not know who represented Mr. Finn.

Q. Your firm in this matter was represented by you personally, or by Colonel Buckingham with you, or by both?

A. Mr. Buckingham and myself.

The Court:

Q. How many lawyers did you say it is whose combined wisdom and erudition is evidenced by this limited partnership agreement?

A. Well, I do not know. Five, I guess, I named, something of that sort.

923 Q. Do you know how many months it took them to bring it forth?

A. I do not know. I only know that the Von Frantzius Estate things were in flux then and still are.

Q. You saw that limited partnership agreement, did you?

A. Yes.

Q. And your clients signed it, did they?

A. No.

Q. Why not?

A. You mean this last one?

Q. No. I mean a one, a limited partnership agreement.

A. Yes, I signed one.

Q. For them?

A. Yes.

Q. What is that?

A. I do not know.

Q. Who did you deliver it to?

A. I left it in Colonel Foreman's office.

The Court: Ask Colonel Foreman to come over here and bring over a document called a limited partnership agreement with Hecht and Finn and Studebaker.

Q. They all signed that, did they, Mr. Hoffman?

A. Yes, they did, your Honor.

The Court: Have you gentlemen among you a copy of that document, any of you?

Mr. Moses: No. I was just about to ask the witness that question.

The Court: Have you, Mr. Platt, a copy of that document?

Mr. Platt: I have what I believe to be a photostatic copy of it, if your Honor please.

The Court:

Q. Did you say, Mr. Hoffman, what your understanding was as to why—

Mr. Platt: This, I am told, is a copy of the paper that was signed (handing document to the court), but the copy that was furnished to me the signatures have been torn off.

The Court: Thank you.

Q. Did you say what your understanding was as to why the original document, originally signed by these various people, was superseded by something else?

A. I did not state, your Honor. I do not know definitely. My

recollection doesn't serve me on that. I only know that it was all signed up and left with Colonel Foreman with a definite understanding on the part of all of us that it wasn't delivered and not effective until certain things happened or were to happen. I think one of them was the dismissal of the Von Frantzius bankruptcy proceedings, and the other was something else; but I know before the time came when that should have gone into effect,—it didn't go into effect. The signatures were torn, as I understand it, and that is all there was to it.

Q. Well, did you understand it didn't go into effect because of some legal impediment or because of somebody saying he didn't want it to go into effect?

A. There wasn't any question of legal impediment. Let's see. Mr. Regensteiner said something that refreshed my recollection somewhat on this question of partners, supplemented by Mr. Mayer. I think it was, your Honor, one reason why they couldn't go ahead with this was that under the New York Stock Exchange rules—that was it—they couldn't have more than two limited partners, and as this agreement called for all of us as being limited partners, as I recollect it, it had to be—couldn't go into effect for that reason, if not for others.

Q. Well, do you remember who it was that devised the Hecht and Finn Trust as a solution of that problem?

A. I think it was a matter that evolved simply from discussions, and so on, after it became apparent that this couldn't be done.

Q. Did you represent the Studebakers' interest in these negotiations, or did somebody else represent them in part?

A. Why, I think Colonel Buckingham and I probably represented them.

Q. Do you recall any other reason than the one suggested by Mr. Regensteiner, namely, that more than two members of a brokerage firm were prohibited by the rules of the New York Stock Exchange from being limited partners, as being the reason why this document here, which you say was signed up and later superseded by another document, which provided for the two limited partners, Hecht and Finn, and the issuance of what you have called the Hecht and Finn trust certificates to the various other gentlemen who had originally signed this first document—do you know of any other reason?

A. I think there were others, your Honor, but I do not know.

Q. Do you recall what they were?

A. No, I don't.

The Court: Mr. Regensteiner, do you remember any other reasons?

Mr. Regensteiner: Than the ones I stated?

The Court: Yes.

925 Mr. Regensteiner: I do not.

The Court: You gentlemen, among you, the half dozen or so, you have heard Mr. Hoffman—

Mr. Regensteiner: I did, yes.

The Court: —discuss the question of going into this business as limited partners, did you?

Mr. Regensteiner: Well, I understood it that way.

The Court: Yes. And you signed up a document, the first two paragraphs of which I will read to you to refresh your memory:

"Articles of agreement, made this 2nd day of April, 1917, by and between Ben Marcuse, L. H. Morris, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter M. Zuncker, Joseph Finn and Theodore Regensteiner, all of the City of Chicago, County of Cook and State of Illinois, witnesseth:

"Whereas, the said parties desire to become partners with one another under the name of Marcuse & Company under and by virtue of the limited partnership agreement, as hereinafter set forth."

Now, that set forth your intention, did it?

Mr. Regensteiner: No doubt.

The Court: And your wishes?

Mr. Regensteiner: No doubt.

The Court: To become partners under this limited partnership agreement?

Mr. Regensteiner: That was the intention.

The Court: Sir?

Mr. Regensteiner: Those were the intentions.

The Court: Mr. Hoffman tells me, and it is a fact as I gather it from what these other gentlemen say, that this agreement was in fact signed by you gentlemen, and then you subsequently abandoned that particular paper and signed another agreement under which Hecht and Finn became the men named as limited partners. Do you remember that?

Mr. Regensteiner: I do not believe I was in one of the meetings when that was discussed.

The Court: Well, the Hecht and Finn Trust was arranged and provided for?

Mr. Regensteiner: Yes.

The Court: And they were called limited partners?

Mr. Regensteiner: Yes.

The Court: Hecht and Finn?

Mr. Regensteiner: Yes, sir.

The Court: And they have appeared here as limited partners.

That is, they are called limited partners, but you are not
926 called a limited partner in this hearing. Now, neither is Mr. Hoffman. You are called holders of trust certificates. Do you remember any other reason, than the rule of the New York Stock Exchange, which I am informed prohibits more than two members or more than two limited partners in a stock exchange or in a brokerage membership, as being the reason why you abandoned this original contract and they worked out the Hecht and Finn trust arrangement? Do you remember any other reason?

Mr. Regensteiner: I do not, your Honor.

The Court: The only thing you remember is the rules of the New York Stock Exchange stood in the way of you and Hoffman and

Zuncker and the rest of these gentlemen being limited partners, and you could only have two.

Mr. Regensteiner: That is my recollection.

The Court: That is your recollection.

Q. Now, Mr. Hoffman, do you now remember any other reason than that one why this document, that I have quoted two paragraphs from, did not finally go into effect as the actual subsisting, continuing agreement in force between the signatories to this document, except the rule of the New York Stock Exchange limiting special partners to two?

A. I stated to your Honor, I think, I have a recollection that there were others, but what they were I can't think of.

Q. You can't recollect any others?

A. I can't recollect any others now.

Q. Do you remember that as a reason?

A. Yes, your Honor.

Q. Who can tell me, do you know, of any other reason?

A. I do not know.

Q. Before you signed this document did you read it?

A. I did.

Q. Did you sign it at one time?

A. I did.

Q. And at the time you signed it did you understand that there was present in this document the paragraphs I have just read in my question to Mr. Regensteiner?

A. Yes, your Honor.

Q. And did that evidence your understanding of the facts as to what the desires of these signatories were?

A. It was not the desires, your Honor. It was a question of doing—

Q. I read it again: "Whereas the said parties," of whom you were one, "desire to become partners with one another under the name of Marcuse & Company under and by virtue of the limited partnership agreement as hereinafter set forth."

A. Yes.

Q. Is that a correct statement?

A. That appears in the document, your Honor.

Q. Well, will you answer my question?

A. I misunderstood you—

Q. Was it correct?

A. I misunderstood your question.

Q. Was that a correct statement? Was it the desire of all these gentlemen mentioned here to become limited partners under a limited partnership agreement, following that paragraph?

A. It was our desire to become limited partners, if that served the purpose of recovering our claim against the Von Frantzius Estate, yes.

Q. Do you need to use all of those words to answer that question?

A. I think so, your Honor.

Q. Have you got in mind the possible necessity of that qualification to protect a client?

A. No.

Q. Why didn't you put that in this paragraph, if that was your desire, if this isn't the desire as it is expressed?

A. Because the legal effect of the document would have been, I think, just what I have stated.

Q. And in that respect this document here, this assertion, is incomplete?

A. No, I think it isn't, your Honor. It states it is the desire to become limited partners under the partnership agreement.

Q. Then this clause, on reflection, you think does express the desires of the signatories?

A. Yes.

Q. Sir?

A. Yes, your Honor.

The Court: Now, is Mr. Zuncker here? Is Mr. Brown here?

A Voice: He will be here in a few minutes, your Honor. I just got in touch with him.

The Court: Did you have your luncheon, Mr. Hoffman?

Mr. Hoffman: I have not, your Honor.

The Court: Did you, Mr. Regensteiner?

928 Mr. Regensteiner: I did not, your Honor.

The Court: This is Monday. Do you eat on Monday?

Mr. Regensteiner: If I have the price I usually do.

The Court: Well, is Mr. Hecht or Mr. Finn here?

Mr. Platt: Mr. Finn is here, if your Honor please. Mr. Hecht is not here. He is very ill.

The Court: Mr. Finn, will you take the stand for a minute?

RICHARD YATES HOFFMAN resumed the stand and testified as follows:

The Court:

Q. I invite your attention to a document purporting to have been executed on the 2nd day of April, 1917, signed on the 2nd day of April, 1917, by eight gentlemen, Ben Marcuse, Lew H. Morris, Hecht, Hoffman, Vette, Zuncker, Finn and Regensteiner. I ask you if that is a reproduction, a photostatic copy of your signature?

A. It is, your Honor.

Q. And do you remember this, the execution of this document—

A. Yes.

Q. —in connection with the document, a copy of which I have heretofore asked you about in connection with the questions relating to the first two paragraphs of it?

A. Under the partnership act it is necessary to have articles of partnership and also a certificate that is recorded.

Q. Now, do you understand that these two documents were executed in connection with this first arrangement?

A. Yes, your Honor.

Q. And the arrangement which was superseded by the other arrangement where Hecht and Finn became the only two limited partners?

A. Yes. Those papers were never delivered nor recorded, nor anything done with them. They were simply destroyed and never went into effect.

Q. Did these papers at the time they were signed, did they evidence your understanding of the agreement between the parties at that time?

A. They evidenced the arrangement that would probably have to be entered into.

Q. Did they evidence the agreement of you eight gentlemen at the time they were signed?

A. Subject to the escrow with Colonel Foreman, your Honor, upon which their delivery and finally going into effect depended.

929 Q. And what was that fact?

A. That escrow, as I have stated, was conditioned, as I recollect it, on the events in the Von Frantzius & Company bankruptcy. That was pending in this court then.

Q. Did those things finally materialize and eventuate?

A. I think they did, but before that time these instruments were destroyed, as my recollection goes, so that these never went into effect.

Q. Well, in other respects did you understand, or did you understand at the time, that these two documents evidenced the agreement between the parties at that time?

A. Your Honor, all I can say is that we—I think Mr. Hecht was going out of town, going to Florida. We simply signed them up at that time so that we could have signature at that time as against the future.

Q. Can you tell me whether they did at that time evidence your understanding as to what the parties had agreed to?

A. They evidenced what we would have probably to agree to in the end, as we then saw it; in other words, it was a matter of signing up a formal document, because these are rather formal documents. I suppose every limited partnership agreement is the same way.

The Court: I do not know anything about them. (Addressing the reporters:) Will you mark these two documents Court Exhibit A and Court Exhibit B, March 29, 1920?

(Whereupon said documents were marked accordingly.)

Mr. Moses: May I ask Mr. Hoffman one question, if your Honor please?

The Court: Yes.

Mr. Moses:

Q. The second limited partnership agreement and certificate, the one that bears date also April 2nd, when was that signed, as a matter of fact, do you know?

A. That is the one——

Q. I mean the one, the certificate of which was finally filed on June 30th.

A. To which I am not a party. I do not know.

Q. You do not know?

A. I do not know. Those things were——

Q. Do you know when that second partnership agreement, which bears date April 2nd, was finally signed?

A. I do not. I wasn't there. I am not a party to it, and I do not know, Mr. Moses.

930 RICHARD YATES HOFFMAN resumed the stand and testified as follows:

The Court:

Q. Mr. Hoffman, does Mr. Brown's answer to my question refresh your memory?

A. It does with respect to the later development, your Honor.

Q. Well, will you now go on and amplify, taking all the time you wish, amplify this situation in order that I may understand it.

A. Let me preface it by simply saying that I had a very definite feeling of relief——

Q. Don't bother about your relief.

A. It is part of the facts, your Honor.

Q. You can assume that it is entirely agreeable to me that you felt relief, but go on and give me the facts now.

A. Well, my feeling was when it developed we could not go into a limited partnership that I could breathe much more freely, and when it was—let's see. I don't recollect now whether it was definitely suggested that I should be one of the limited partners,—on the second occasion. I mean,—but I know if it had been suggested I would not have been.

Q. Why not?

A. For the simple reason that no one likes to go into anything in which he doesn't have to go. In other words——

Q. Well, in other words, you were—as I understand it, you ran up against the New York Stock Exchange stone wall rule——

A. Yes.

Q. —that there could only be two?

A. Yes.

Q. And some fellow said, "Maybe Hoffman will be one of them"?

A. Yes.

Q. And it turned out that that honor fell to Hecht and Finn?

A. Yes.

Q. And you say you now recall distinctly with what a feeling of relief you learned that the crown had passed to them?

A. Yes.

Q. Just why the feeling of relief?

931 A. The whole purpose of having a limited partnership, of course, is to limit the liability of the special partners. We

all believed, and I still believe, under the limited partnership act, prior to July 1, 1917, the special partners have no liability beyond their contributions, making them as stockholders, having no liability beyond the payment for the stock.

Q. Then why were you losing sleep and having trouble in getting your breath if you were in that frame of mind?

A. Because the law of limited partnership isn't as well developed as the law with respect to stockholders' liability.

Q. But why did you feel relief?

A. The law with respect to limited partnerships isn't so well developed that the limited liabilities can be guessed at as well as it can be if you are not in at all.

Q. Did you understand that Hecht and Finn were in any different situation, after all these papers were signed up, than the rest of you men were who signed up papers with them, but who were not limited partners?

A. We had no concern with them.

Q. Will you answer my question?

A. My understanding was, as limited partners they had no liability until—

Q. Will you sit down there, and when you get ready answer the question.

A. I am trying to answer, your Honor.

Q. I want you to tell me whether or not you then understand that Hecht and Finn were in any different relationship, or had any different responsibility, than you and Regensteiner and Vette and Zuncker had under this agreement which finally went into effect.

A. My understanding was that their liability would not be any different.

The examination of Joseph M. Finn on March 29, 1920, before the Honorable Kenesaw M. Landis, referred to by Mr. Jacobson on page 624 of the record, and offered as a part of the cross-examination of Mr. Finn on this hearing, is in words and figures as follows, to-wit:

932 JOSEPH M. FINN, called as a witness, having been first duly sworn, testified as follows:

Examination by the Court:

Q. Mr. Finn, were there any other members, any other gentlemen, interested in this matter, or having to do with this matter, aside from Marcuse and Mr. Morris, Mr. Hecht and Mr. Finn? What other gentlemen were interested in this matter? Regensteiner is here and Mr. Hoffman is here. Who else?

A. Vette and Zuncker. Those are signers, to my recollection.

Q. And were you one of the signers of this document that I have examined Mr. Hoffman about?

A. Yes, sir.

Q. And who else signed that, do you remember?

A. I remember that all those names you just mentioned.

Q. All these names?

A. I remember.

Q. I do not want to tax you for the present any further except to ask you if you have now a recollection of any additional reasons—first, let me ask you what is your recollection as to the reason why this document, a copy of which I am calling to your attention, with the last page indicating that the signatures have been torn off—why wasn't that allowed to stand as the final agreement between the partners?

A. The way I understand it was because the New York Stock Exchange notified—we were notified by the New York Stock Exchange that only two limited partners would be permitted, and Mr. Hecht said he was willing, and after a great deal of persuasion I finally, unfortunately, decided to sign.

Q. Was there any other reason why Mr. Hoffman and Mr. Regensteiner and Zuncker and Vette weren't in there as limited partners just as you and Hecht were?

A. None whatever.

Q. Except that rule of the New York Stock Exchange?

A. None whatever, that is the only reason.

Q. Now, let me ask you in the practical working out of this thing among you men, you and Hecht and Hoffman and Regensteiner and Vette and Zuncker, what difference was there between you and Hecht and these other four men in the distribution of profits that came—

933 A. None whatever.

Q. —from Marcuse & Company?

A. None whatever.

Q. No difference at all?

A. Not at all.

Q. What was the total fund that went into Marcuse & Company?

A. \$190,000.

Q. And how much of that was yours?

A. \$31,500.

Q. And how much Hecht's?

A. \$25,000.

Q. \$50,000 from Studebaker Brothers, \$18,000 from Regensteiner? Do you remember how much from Vette and Zuncker?

A. I wouldn't want to say as to that. I think it was thirty and twenty-five. I wouldn't swear to that.

Mr. Platt: Fifty, your Honor. The amount contributed under the name of Regensteiner was more than eighteen. Which was all the testimony offered or received, and evidence heard, on the hearing of the cause.

[Title omitted.]

Monday, June 21, 1920—10 o'clock a. m.

Statement by the Court.

The Court: I am prepared to announce a conclusion in this matter that has been submitted, not in the form, considering its highly important and interesting nature, I would like to make it in. However, it is more important that the conclusion should be announced than it is for a District Judge to write a long and labored opinion.

The conclusion is that the so-called "special partners" are all general partners; that these so-called "special partners," selected,—all of them selected Hecht and Finn as the agents for the operation of the special partnership, by and through Hecht and Finn; that Hecht and Finn, in fact, were Hecht and Finn, Vette,—what is that other name,—Siedenstricker?

934 Mr. Gesas: Regensteiner.

The Court (continuing): —Regensteiner, the Hecht-Finn Trust, the Studebaker Trust, as Clement and George Studebaker; that that is what Hecht-Finn were. They were all of these people; and that under the laws of the State of Illinois that thing was not a special partnership, but it was, by the law of the State of Illinois, a general,—member of a general partnership, by reason of the failure to comply with the Illinois statute specifying the steps, and prescribing the route to be taken to constitute a limited partnership, which, as I have announced before, it was my view had to be obeyed to accomplish that end, but which in this case was not done in any essential particular.

Now, that is my conclusion. There are in these two pouches, (indicating) I suppose eight or ten pounds in weight, observations I have put down from time to time respecting the various things that have happened, as disclosed by the evidence, that have lead me, step by step, to this conclusion.

But you have your motion here, and I am making this announcement ahead of time, ahead of the time I intended to make it because it is timely—because I have the conclusion; it is definite and fixed, and it is more important it should be announced than, as I said before, the Bar and posterity should have the benefit of these learned observations that I might make.

That leaves, on that issue, a question to be determined, I assume, whether these men are solvent. Do I state your position, Mr. Miller?

Mr. Miller: Well—

The Court: I understand the statement to be made during the argument here that this conclusion necessarily would be followed by a demonstration, not merely evidence, but demonstration of solvency. The statement has been made here that Hecht and Finn together, nobody else here considered, are solvent.

It was a serious question whether or not Marcuse & Company, composed of Marcuse, Morris, Hecht and Finn alone, without the Studebakers and without Seidensticker,—what is that name?

Mr. Miller: Regensteiner.

The Court (continuing): —with Regensteiner, Vette and Zuncker,—not “Junker,”—but Zuncker,—if you pronounce the names of these respondents you are supposed to pronounce them right,—without considering any one of these other men, it
935 would be a show of solvency;—I do not know anything about that.

Now, if either side desires to contest the question of the solvency of the respondents to this petition, with a view of asking, or resisting an order under the Bankruptcy Law, that would be an appropriate order to be asked for.

In view of the announcement that has been made here, I think I will hear that motion, and, unless there is some good reason why it should not be done, I will refer the question of solvency to Mr. Wean.

Mr. Miller: What does your Honor have in mind as to an order?

The Court: There is no order now, no order to be entered. This is not the predicate of an order.

Mr. Miller: That was exactly what I wanted to know.

The Court: In order for an order to be entered there must be not merely a partnership but there must be solvency or insolvency of record. In solvency, I assume it would be a denial of adjudication.

Mr. Miller: I so understand it.

The Court: If insolvency, an order of adjudication; but this is only one step towards that point.

Mr. Miller: Well, this is what I have had in my mind and what I wanted to ask the Court: Before the Court would go into an investigation of the question of solvency or insolvency, the Court would, of course, first have to determine whether all of these people are members of the firm of Marcuse & Company.

The Court: I have determined that.

Mr. Miller: Yes. Your Honor has made the announcement from the bench, but not as to the kind of order that is to be entered.

The Court: Well, there will be no order entered.

Mr. Miller: What?

The Court: There will be no order.

Mr. Miller: Well, might there not be an order, and would it not in the end facilitate this matter, considering the importance of the question and the amount involved, if the Court did enter an order, putting into the form of an order what your Honor has just now announced?

The Court: Mr. Miller, I am sitting here in a case, and this is the situation: There are two elements in the case,—one is partnership, the other is insolvency. Now, we are considering this on the
936 trial of the case. I hear the witnesses, the witnesses produced by the petitioner, about partnership. They have just finished their testimony, and to enable the matter to proceed intelligently the Judge says, “Before I hear the evidence on solvency, I

will hear the Petitioner's evidence on partnership," and at the end of the hearing of that evidence the Judge announces his frame of mind in favor of the Petitioner. Now, then, you would not enter an order, would you?

Mr. Miller: Inasmuch as we did not do that, but went to trial on the other question first, without going into the question of solvency or insolvency, is it not permissible, under the practice, for your Honor,—your Honor now having decided that,—to enter an order?

The Court: An order on whom?

Mr. Miller: Enter an order finding that all of these people are general partners, then directing that we proceed to the question of solvency?

The Court: I will not enter any order of that kind. It is not an order on anybody to do anything.

Mr. Miller: No, but it is an adjudication.

The Court: It is a finding, that is all it is. It is a finding. No, I will not enter an order.

[Title omitted.]

Thursday, July 1, 1920—9.30 o'clock a. m.

Parties met before the Court pursuant to notice.

Present: Mr. Buckingham, Mr. Miller, Mr. Platt, Mr. Wormser, Mr. Jacobson, Mr. Ringer, Mr. Moses, Mr. Johnstone, and Mr. Grollman.

Colloquy Between Court and Counsel.

Mr. Jacobson: Your Honor was going to consider the question of entering any order and proceeding on the question of proof of what are liabilities and what are assets. That matter was left open.

Mr. Miller: If the Court please, when we were here before, your Honor requested or rather gave us until 2 o'clock that afternoon to give me an opportunity to discuss with some of my associates, and then I was compelled to ask for additional time.

Now, while the Court has already indicated when we were here before how the mind of the court was working, I want to make a motion and a request and a few observations in support of it.

If we now go to a referee it will involve a long, protracted and expensive investigation on the question of solvency. It will involve an investigation into the private affairs of men of large business interests whose affairs should be investigated if they are partners and liable to creditors, and whose private affairs should not be investigated if they are not. If this question which your Honor passed upon the other day—

The Court: Mr. Miller, on the question of that matter those gentlemen have all—have still got in their pockets money that they received labeled dividends which they now know was not a

dividend and which they now know demonstrably was other people's money. They have still got that money, haven't they?

Mr. Miller: You are speaking now of the ones I am representing?

The Court: Yes. I am speaking of everybody except Hecht and Finn.

Mr. Miller: Hecht and Finn have not only turned into this Court the amount of money——

The Court: That they got, but the amount of money that all the certificate holders got.

Mr. Miller: Exactly. And if there is a liability, therefore, the creditors of this concern are in no position to say that we——

The Court: I will keep still, but I was only talking about what you seem to have in mind as rather a nice equity as against even an inquiry into the affairs of those people.

Mr. Miller: Whatever may be the obligation, between certificate holders, of my people to reimburse Hecht and Finn for any money they have returned, the creditors are not entitled to a double return of that money.

938 The Court: Now, what was it that you wanted on this?

Mr. Miller: I want this: Your Honor has now held, without entering any order, that we are all general partners. I now request and move the Court to enter an order in which the Court will put into the form of an order what you have now held. In other words——

The Court: I will put in a fact. I will find a fact. The only order I can enter on this issue is an order of adjudication or refusal to adjudicate.

Mr. Miller: You can enter an order in which you will hold that all of these people are general partners and liable as such to the creditors of this concern, and in which you adjudge them to be that.

The Court: Well, now——

Mr. Miller: And in which you will then, if that is what your Honor intends to do, refer this cause to the Referee to proceed with the taking of evidence to determine the question of solvency or insolvency, and when you do that, or, if you do that, you give us an opportunity, if we can do it, to have that order reviewed by the Court of Appeals on a petition to review and revise.

The Court: It is impossible to enter a reviewable order on an issue of adjudication—enter a reviewable order where you simply have found one of two facts which are the bases of the only order you can enter, namely, adjudication or not adjudication.

Mr. Miller: If your Honor is right about that. We may find that out to be true, to our sorrow, in the Court of Appeals.

The Court: Well——

Mr. Miller: But we think we can review. That is an interlocutory order, of course.

The Court: There isn't any order at all, Mr. Miller. It is the finding of a fact.

Mr. Miller: Very well. Coupled with an adjudication; because that is what you will eventually adjudicate.

The Court: Adjudication of what?

Mr. Miller: That we are general partners.

The Court: Well——

Mr. Miller: And then proceed with your order to direct the taking of testimony by the Referee.

The Court: You might just as well—if it was a personal injury suit, and two questions were involved: Was the man hurt, 939 and preliminary to that, or going with it—was he hurt; was the defendant negligent, and was the plaintiff free from negligence. Have the Judge, in a reviewable order, to start out with finding that the plaintiff was free from negligence.

Mr. Miller: I do not think that is a parallel case at all. Suppose we came to the bar of this Court——

The Court: Suppose I was hearing it without a jury.

Mr. Miller: But you didn't.

The Court: I say, suppose I was hearing it. Suppose the parties submitted to me a personal injury claim, without a jury, and there were those questions——

Mr. Miller: Oh, well——

The Court: At least there were in the good old days those three questions.

Mr. Miller: They are still here.

The Court: Still here, are they?

Mr. Miller: In some cases.

The Court: Suppose the Judge announces, "Gentlemen, I do not think you need go any further into the question of how the plaintiff was deporting himself. He was free from negligence. That is pretty plain. Now, don't spend any more time on that."

Mr. Miller: Of course, I agree with you about a personal injury case. There is a wide difference in this. I do not think your analogy is applicable here.

The Court: Why not?

Mr. Miller: Because——

The Court: The only order I could enter in that situation would be liable or not liable; negligent or not negligent.

Mr. Miller: You are going to enter an order now referring this to the Referee, aren't you?

The Court: That is the order that is reviewable; referring it to a Referee.

Mr. Miller: Suppose, for instance, you had reached the conclusion that we were not partners, you would have stopped, wouldn't you?

The Court: Yes, certainly.

Mr. Miller: You wouldn't have then said, "Why, gentlemen, there are two bites to this cherry. We have only taken one now, and I must go on now and make up this whole record here."

The Court: I tell you, gentlemen, I have been mousing this through my mind. I do not want to spend any more time on this

question because I am perfectly hopeless if I can enter an
940 order here finding this fact that is reviewable by some court.
Why, I am so hopeless it is a waste of all of your time to try
to show it to us.

Mr. Miller: The Bible says it is never too late for a sinner to repent and return.

The Court: That is right.

Mr. Miller: But if you don't want to repent and return this morning, I want you to do this——

The Court: You want to get the environment in which that old boy talked.

Mr. Miller: Well, there is a difference of opinion between us.

The Court: Yes.

Mr. Miller: In other words, I may be laboring under a delusion, but I have got the feeling that it is just as much the right and duty of the Court to protect a man from the payment of debts he ought not to pay as it is to require a man to pay who should pay.

The Court: Protect a man from the payment who ought not to pay?

Mr. Miller: Who ought not to pay, yes. Now, your Honor thinks they ought to pay. All right. I want to get that question ultimately and finally disposed of as quickly as possible.

The Court: Well, you are going to waste time by taking it this way, in my judgment.

Mr. Miller: Very well. Then let me do this——

The Court: What Referee has this?

Mr. Ringer: Referee Wean.

Mr. Miller: No Referee has it as yet. I want to make a motion and request the Court, on behalf of the two Studebakers, Hoffman, Regensteiner, Vette and Zuecker, that, having announced your decision that they are to be held as general partners, you now enter an order in which that decision will be judicially announced by an order finding them general partners and liable as such, so as to give us an opportunity to have that order reviewed by a——

The Court: An order refusing to enter the order you ask. Enter that order.

Mr. Miller: Well, I am making a motion——

The Court: I deny your motion.

Mr. Miller: —that you enter that kind of an order.

The Court: I deny your motion.

Mr. Miller: Very well.

941 The Court: Your motion is for the order——

Mr. Miller: No. My request and motion is that, having decided against us, it be put into the form of an order.

The Court: Let the order include the thing that the Court found. Let that be drawn as a finding of fact on that issue which was submitted to me by the parties in this litigation in advance of going into the question of solvency or insolvency. Let the order show that that is a finding of fact, order finding that fact, and let this order in itself—let it be in the bowels of the order, not merely within the four corners of the order. Let it be in its very bowels.

Mr. Miller: You would have to get it between the four corners to get it *into* its bowels; that is, unless the bowels are located in some place I am not familiar with.

The Court: And let this order exhibit in its intervals the proposition that it is a finding of that fact, and that it is not an adjudication of anything, and that the Court's refusal to go on and enter what you call an order, that is,—well, an order that is reviewable, is because of the fact that there is missing from this thing the thing that has to be here to entitle the Court to enter an order that is reviewable. Now, you do not need to put it in those express words. You can leave one or two of them out, but put in what I want, and let me have it during the day.

Mr. Platt: We may have it submitted to us, I suppose, for our inspection?

The Court: Yes, everybody can have it.

Mr. Ringer: You want it anatomically correct, I take it?

The Court: Yes.

Mr. Miller: Who is going to draw that order?

Mr. Jacobson: We can draw it and submit it to you and to all of you gentlemen, if you like.

The Court: Well, you can draw it here in fifteen minutes' time without any difficulty, gentlemen. Your heads are working. Mine is not.

Anything further in this matter?

(Here followed a discussion as to the manner in which the question of the solvency of those found to be partners should be investigated.)

Mr. Jacobson: That is all, except that order we talked about.

942 The Court: You may get up the order and come in here with it. Who is here today? Gentlemen, come in here about 12 o'clock with that order. Gentlemen, you have to come in a little earlier than that.

Mr. Moses: The order—shall that order embody in it a reference to the referee, and, if so, for what purpose?

Mr. Jacobson: I think that is injecting something.

Mr. Moses: I am asking for information.

The Court: What did you say? Injecting what?

Mr. Jacobson: The inclusion in the order of a direction that the matter be referred to the Referee is apparently something I didn't understand.

The Court: How will it get to the Referee?

Mr. Jacobson: That is a separate order.

The Court: What I want is this other thing in and all those. Then you can have an order to refer to the Referee.

Mr. Miller: Why shouldn't it all be in one order?

The Court: I do not care. Do you want it not in one order?

Mr. Jacobson: Yes.

The Court: Well, speaking from your standpoint and considering the interests you represent here, you may have two orders.

(Here followed a general discussion as to the accounting before the Referee.)

The Court: Now, I will tell you the easy way out of this. The Court has made an announcement. The Record may show, either in writing, or by a verbal action by Mr. Miller, representing Regensteiner, Vette, Zuncker, and Messrs. Studebaker, that the Court enter an order embodying the announcement which the Court has made from the bench, and the Court declines to enter that order, and it may be presented by a bill of exceptions. Now, that is the way to present this thing.

Mr. Miller: What I want the Court to do is to pass upon the partnership question by an appropriate order before we go into any investigation of the—

The Court: You may make that application. A bill of exceptions or a certificate of evidence is necessary to enable you to get that presented.

Mr. Miller: I understood you to say you were going to enter an order here making a finding.

The Court: Yes, I did, but I have changed my mind on that. I have announced a conclusion; a finding of fact—partner-
943 ship. One of two that are involved. You ask me now on behalf of your clients to put that in an order and I decline.

Mr. Miller: All right.

The Court: That is the way to do that, isn't it, Colonel, as a matter of practice?

Mr. Buckingham: Yes. We want to get in the order that your Honor made that finding.

The Court: You want a certificate of evidence now?

Mr. Miller: Yes. Now, isn't there to be an order of reference entered?

The Court: Yes.

Mr. Miller: When are we coming in on that?

Mr. Platt: It will only take three minutes to draw that order, I take it.

The Court: Yes.

Mr. Platt: I think Mr. Sullivan could draw that order; only a general reference to determine the assets and liabilities as of March 13th.

Mr. Miller: I take it this order of reference should indicate upon what basis—that is to say, as to the members of the partnership. In other words, are we going to determine the assets and liabilities of the firm of Marcuse & Company as composed of Marcuse and Morris, or are we going to determine all of these people—

The Court: All of these people; Marcuse, Morris, Hecht, Finn, the two Studebakers, Hoffman, Regensteiner, Vette and Zuncker.

Mr. Moses: The moment you begin to do that you have to make a finding of some sort, because if Marcuse & Company are only composed of four people or two people, and not all of the people, then, of course, the individual liabilities, as distinguished from partnership liabilities of the individuals forming that firm, are not to be considered by the Court. In other words, Hecht might have a lot

of individual liabilities. It is only the net result of his estate that is to be considered in determining whether the partnership is solvent or not. The Referee, therefore, has to know in some way or another what your Honor's ruling is as to who the members of the firm are.

The Court: I am going to refer it to him.

Mr. Moses: Then you must incorporate in your order of reference—

The Court: I just refer it to him to inform the Court as to the assets and liabilities, solvency or insolvency, of Marcuse &
944 Company as of such and such a date, composed of the following members.

Mr. Miller: That is all right. Then we know whose assets are to be considered.

Mr. Jacobson: Your Honor, take the case of one of my clients by the name of Riblack. Marcuse books show there is due him now \$19,000. He has in fact paid in \$25,000.

The Court: Is it open?

Mr. Jacobson: Some of his trades are open. I didn't want the door closed to him showing his entire situation. In other words, if it refers to the names of those whose trades are not closed up, that is one thing; if it is merely accounts, and refers to accounts not closed up, that is a wholly different thing and makes a very substantial difference. The Court has said something based upon the urgency of certain counsel for respondents, and which wasn't given consideration from that standpoint. That man insists he is entitled to all his money back. His name is Riblack.

The Court: What?

Mr. Jacobson: His name is Riblack.

The Court: He is insisting he is entitled to all of it back because—

Mr. Jacobson: Because the things he bought were not carried for him. He has paid more than half the value of them.

The Court: If he had gone in there and demanded a showdown on the 12th day of March he would have got all his money, the same as if real transactions would have occurred, would he? Go ahead with that I have indicated. I won't do that because the fellow—he wants to go back. All that means is he wants to go back and have another deal after he has played the hand. That is all it amounts to.

Mr. Jacobson: If you entered an order like that, that would give that man some claim to have your Honor's ruling reviewed.

The Court: I am sending this over for the Referee to add and subtract. I am not finding anything as to anybody's ultimate rights here.

Mr. Miller: When will the order of reference be submitted?

The Court: Enter an order referring it to Referee Wean with directions to report findings of fact and conclusions of law as to the solvency of—as of March 13th—

945 Mr. Moses: 11th.

The Court: What?

Mr. Moses: March 11th.

The Court: —March 11th, 1920, of Marcuse, Morris, Hecht, Finn, Messrs. Studebaker, Regensteiner, Vette and Zuncker.

Mr. Jacobson: And Hoffman, Richard Yates Hoffman.

The Court: Who?

Mr. Jacobson: Richard Yates Hoffman.

Mr. Platt: The representatives of the Studebakers.

The Court: He hasn't any more business in here than I have got in here. He was a mere messenger boy, wasn't he?

Mr. Jacobson: I withdraw that suggestion.

Mr. Platt: When we claimed these other gentlemen were partners we omitted Mr. Hoffman, did we not, Mr. Miller?

Mr. Miller: I do not recall.

Mr. Moses: Was merely an agent.

The Court: —Composing the firm of Marcuse & Company. In proceeding under this order the Referee will not consider transactions shown by the books of Marcuse & Company to have been closed prior to March 11, 1920. That does it, doesn't it?

Mr. Moses: If he may make it, "liabilities arising out of transactions," to make it more exact.

The Court: I say, not to consider transactions.

Mr. Moses: That is all right.

The Court: If you have any difficulty with that, you may come in here Monday morning.

Mr. Miller: Is this order to be entered today, your Honor, that you have just dictated, the order of reference?

The Court: Yes.

Judge's Certificate.

And for as much as the matters and things above set forth do not otherwise fully appear of record in this cause and Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr. and George M. Studebaker having tendered this Certificate of Evidence and prayed that the same be certified under the hand and seal of the judge of this court, and thereby made a part of the record in such cause, I, Kenesaw M. Landis District Judge of the United States before whom the above entitled cause came on to be heard in said District Court on May 10, 1920, do hereby certify that the foregoing is a true and correct transcript of all of the evidence offered and received, and of the evidence offered and refused, and 946 the rulings of the court upon the questions of law arising thereon, upon the hearing of said cause upon May 10, 1920, and upon the days following upon the partnership issue raised by the amended petition of the original petitioning creditors and the intervening petitioning creditors, and the answers thereto, and of certain proceedings in connection therewith, and that the statement of such evidence and of such proceedings in the manner and form as hereinabove set forth is essential to the disposition of said cause on the petition to review and revise the order of July 1st, 1920, entered in this court in said cause, and the proceedings in connection therewith, which has been heretofore filed in the Circuit Court of

Appeals for the Seventh Circuit, and I deem it proper that copies of all documentary exhibits appear in said transcript in lieu of the originals thereof, and I now herewith approve the foregoing Certificate of Evidence and direct that it be made a part of the record in said cause.

Dated this 6 day of August, A. D., 1920. (Sgd.) Kenesaw M. Landis, District Judge. (Seal.)

We have examined the above and foregoing Certificate of Evidence and certify that in our opinion it contains a true and correct transcript of all the evidence offered and received and of the evidence offered and refused, and of the rulings of the court upon the questions of law arising upon the trial of the partnership issue in said cause upon May 10th, 1920, and upon the days following, and of certain proceedings in connection therewith, and we consent that copies of exhibits may appear therein in lieu of the originals thereof. Moses, Rosenthal & Kennedy. Ringer & Wilhartz. Jacobson, Bays & Tompkins. Gesas, Epstein & Leonard. Rosenthal, Hamill & Wormser. Haynes & Feinberg. Burry, Johnstone & Peters. Busby, Weber, Miller & Donovan. Donald Defrees. Stephen E. Hurley.

[File endorsement omitted.]

947 And afterwards, to wit, on the 12th day of August, A. D. 1920, there was filed in the Clerk's Office of said Court, in the above entitled cause a Præcipe for Record and Notice; same being in the words and figures following, to wit:—

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

[Title omitted.]

Notice.

[Filed Aug. 12, 1920.]

Tenney, Harding & Sherman, 137 S. La Salle St.; Mayer, Meyer, Austrian & Platt, 208 S. La Salle St.; Stein, Mayer & David, 1633 First National Bank Bldg.; Rosenthal, Hamill & Wormser, 1400—105 W. Monroe St.; Haynes & Feinberg, 79 W. Monroe St.; Michael Gesas, 1132—76 W. Monroe St.; Wetten, Matthews & Pegler, 800—108 S. La Salle St.; Jacobson, Bays & Tompkins, 111 W. Washington St.; Burry, Johnstone & Peters, 108 S. La Salle St.; Levinson & Hoffman, 1016—29 S. La Salle St.; Myerson & Slottow, 111 W. Washington St.; Wilkerson, Cassels & Potter, 1411 The Rookery; Harris, Kagy & Vanier, 850 First National Bank Bldg.; Winston, Strawn & Shaw, 1400—38 S. Dearborn St.; Moses, Rosenthal & Kennedy, 600—614 The Temple; Ringer & Wilhartz, 724—76 W. Monroe St.:

Please take notice that on Thursday, the 12th day of August, A. D. 1920, at 11 o'clock in the forenoon or as soon thereafter as the

Præcipe for Transcript.

matter may be presented, Henry Vette, Peter M. Zuncker, Theodore
 948 Regensteiner, Clement Studebaker, Jr., and George M. Stude-
 baker, acting through their attorneys, will file in the office
 of John H. R. Jamar, the Clerk of the United States District
 Court for the Northern District of Illinois, Eastern Division, a
 præcipe for record in the above entitled cause, the original of which
 is hereto attached and a copy of which is herewith delivered to you,
 at which time and place you may appear if you see fit. Busby,
 Weber, Miller & Donovan, Attorneys for Henry Vette, Peter M.
 Zuncker, and Theodore Regensteiner. Donald Defrees, Stephen E.
 Hurley, Attorneys for Clement Studebaker, Jr. and George M. Stude-
 baker.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the District Court of the United States for the Northern District
 of Illinois, Eastern Division.

[Title omitted.]

Præcipe for Record.

[Filed Aug. 12, 1920.]

To the Clerk of the Above-entitled Court:

You will please prepare Transcript of Record in the above entitled
 cause to be filed in the Office of the Clerk of the United States Cir-
 cuit Court of Appeals for the Seventh Circuit, under the Petition to
 Review and Revise an Order of July 1, 1920, entered in this Court,
 and certain proceedings in connection therewith heretofore filed in
 the matter of Marcuse & Company, et al., alleged bankrupts, being
 Cause No. 2855 in said Circuit Court of Appeals, in accordance with
 an Order entered in said last mentioned cause on July 9, A. D.
 1920, and include in said transcript, copies of such of the following
 pleadings, notices, appearances, process, orders, documents and cer-
 tificates as are or may be of record in the above entitled cause, to-wit:

Mar. 11.—Creditors' Petition filed 3:55 P. M.

949 Mar. 12.—Leave to Fred Meyer et al. to file Intervening
 Petition.

Mar. 12.—Intervening Petition of Fred Meyer, et al.

Mar. 12.—Notice of Motion for the Appointment of a Receiver,
 filed by William Karr Steele.

Mar. 12.—Order appointing Central Trust Company, Receiver.

Mar. 12.—Order approving Receiver's Bond.

Mar. 12.—Bond of the Central Trust Company, Receiver.

Mar. 15.—Appearance of Foreman & Blumrosen, Attorneys for
 Central Trust Company, Receiver.

Mar. 15.—Petition of Harold Lachman.

Mar. 15.—Rule on co-partners to show cause, etc., by March 19, 10.30 A. M.

Mar. 16.—Notice of motion for leave to file an amended intervening petition, making Frank Hecht and Joseph Finn parties, etc. filed by Gesas, Epstein & Leonard.

Mar. 16.—Order granting leave to intervening petitioning creditors to file supplemental amended intervening petition adding Frank Hecht and Joseph Finn as defendants, and that process issue.

Mar. 16.—The supplemental and amended petition of Fred Meyer, et al.

Mar. 16.—Order granting leave to Receiver to employ Moses, Rosenthal & Kennedy as associate counsel, and order on bankrupts and witnesses to appear for examination before Referee Wean.

Mar. 16.—Appearance of Bruno Benjamin Marcuse (impleaded as Ben Marcuse) and of Rosenthal, Hamill & Wormser, as his attorneys.

Mar. 16.—Answer of William Oscar Frazee to the petition of C. B. Giles, et al.

Mar. 18.—The appearance of Marcuse & Co., a limited co-partnership and of Lew H. Morris and of Stein, Mayer & David, their attorneys.

Mar. 19.—The separate answer of Frank A. Hecht, to the petition of Harold Lachman.

Mar. 19.—The separate answer of Joseph M. Finn, to the petition of Harold Lachman.

Mar. 19.—Appearance of W. Knox Haynes and of Michael Feinberg as attorneys for Lew H. Morris.

Mar. 19.—Answer of Lew H. Morris, filed by W. Knox Haynes and Michael Feinberg, his attorneys.

950 Mar. 19.—The answer of Bruno Benjamin Marcuse to the Petition of Harold Lachman.

Mar. 19.—Order granting leave to accept tender of \$46,000 from Messrs. Hecht and Finn, and that the same be turned over to the Clerk and deposited as a separate fund.

Mar. 19.—Order setting down hearing on Petition for adjudication, and answer, and intervening petition for March 28th.

Mar. 23.—The separate answer of Frank A. Hecht to the petition of C. B. Giles, et al.

Mar. 23.—The separate answer of Joseph M. Finn, to the petition of C. B. Giles, et al.

Mar. 23.—Order extending time of Lew H. Morris and Ben Marcuse, to answer petition for adjudication to Mar. 31.

Mar. 24.—The separate answer of Joseph M. Finn to the intervening petition of Fred Meyer, et al.

Mar. 24.—The separate answer of Frank A. Hecht to the intervening petition of Fred Meyer et al.

Mar. 25.—Order extending time of Ben Marcuse to answer amended petition and supplemental intervening petition, to March 31.

Mar. 26.—Subpœna of March 13, together with return and execution thereon.

Mar. 26.—Subpoena of March 16, together with return and execution thereon.

Mar. 29.—Order continuing the examination to discover assets to April 1st.

Mar. 29.—Order in which the court takes under advisement the evidence heard on amended petition for adjudication, intervening petition, supplemental and amended petition, and the answer of Hecht and Finn.

Mar. 29.—Order extending time of Marcuse and Morris to answer, to April 2nd.

Apr. 1.—Order setting cause down for examination in open court to discover assets, on April 3rd.

Apr. 1.—Order granting leave to Joseph M. Finn to file an amended answer to the petition of C. B. Giles, et al. and that process issue.

Apr. 1.—The amendment to the separate answer of Joseph M. Finn to the petition of Fred Meyer, et al.

Apr. 1.—Amendment to the separate answer of Joseph M. Finn to the petition of C. B. Giles, et al.

951 Apr. 1.—Amendment to the separate answer of Joseph M. Finn, to the petition of Harold Lachman.

Apr. 8.—The withdrawal of the appearance of Foreman and Blumrosen, as attorneys for Central Trust Co. Receiver.

Apr. 12.—The response of Clement Studebaker, Jr., and George M. Studebaker, to the amendment to the separate answer of Joseph M. Finn to the petition of Harold Lachman.

Apr. 12.—The response of Clement Studebaker, Jr., and George M. Studebaker, to the amendment to the separate answer of Joseph M. Finn to the petition of Fred Meyer, et al.

Apr. 12.—The response of Clement Studebaker, Jr., and George M. Studebaker, to the amendment to the separate answer of Joseph M. Finn to the petition of C. B. Giles, et al.

Apr. 12.—The separate response of Richard Yates Hoffman to the amendment to the separate answer of Joseph M. Finn to the petition of C. B. Giles, et al.

Apr. 12.—The separate response of Richard Yates Hoffman to the amendment to the separate answer of Joseph M. Finn, to the petition of Fred Meyer, et al.

Apr. 12.—The separate response of Richard Yates Hoffman to the amendment to the separate answer of Joseph M. Finn, to the petition of Harold Lachman.

Apr. 12.—The separate response of Henry Vette to the amendment to the separate answer of Joseph M. Finn to the petition of C. B. Giles, et al.

Apr. 12.—The separate response of Henry Vette to the amendment to the separate answer of Joseph M. Finn to the petition of Harold Lachman.

Apr. 12.—The separate response of Henry Vette to the amendment to the separate answer of Joseph M. Finn to the petition of Fred Meyer, et al.

Apr. 12.—The separate response of Peter M. Zuncker to the

amendment to the separate answer of Joseph M. Finn to the petition of Fred Meyer, et al.

Apr. 12.—The separate response to Peter M. Zuncker to the amendment of the separate answer of Joseph M. Finn to the petition of C. B. Giles, et al.

Apr. 12.—The separate response of Peter M. Zuncker to the amendment to the separate answer of Joseph M. Finn to the petition of Harold Lachman.

952 Apr. 12.—The separate response of Theodore Regensteiner to the amendment of the separate answer of Joseph M. Finn to the petition of Harold Lachman.

Apr. 14.—Order that the answer of Theodore Regensteiner to the amendment to the answer of Joseph M. Finn to the petition of Harold Lachman, stand as his answer to the amendments to answers of Joseph M. Finn to petitions of Fred Meyer, et al., and C. B. Giles, et al.

Apr. 14.—Petition of I. Feigel.

Apr. 14.—Order substituting Jacobson, Bayes & Tompkins, as attorney- for I. Feigel, and granting leave to William Karr Steele to withdraw as attorney for Feigel, and granting leave to file affirmance of original petition filed March 11th.

Apr. 14.—The appearance of Jacobson, Bayes & Tompkins, and the withdrawal of the appearance of William Karr Steele.

Apr. 14.—Notice of motion filed by Moses, Rosenthal & Kennedy, asking that certain issues be set down for hearing on a day certain by the court.

Apr. 14.—Order setting down the hearing on the petition, amended petition, intervening petition and answers for April 29.

Apr. 19.—Subpoenas of April 1st, together with returns and executions thereon.

Apr. 29.—Order granting leave to I. Feigel to file amended petition for adjudication against Ben Marcuse, Lew H. Morris, et al., and order to show cause, and for process.

Apr. 30.—Order vacating order of April 29, granting leave to file amended petition, etc.

Apr. 30.—Order granting leave to file amended petition of I. Feigel, Nathan Jacobs and W. O. Frazee, and for process.

Apr. 30.—The amended petition for adjudication filed by I. Feigel, Nathan Jacobs and W. O. Frazee.

Apr. 30.—Order to show cause.

May 1.—Order referring case to Referee Wean for examination of all bankrupts, etc.

May 5.—Appearance of Ben Marcuse, and Rosenthal, Hamill & Wormser.

May 7.—Subpoena of April 30, with return thereof.

May 8.—The answer of George M. Studebaker to amended petition of I. Feigel, etc.

953 May 8.—The answer of Clement Studebaker, Jr., to the amended petition of I. Feigel, etc.

May 8.—The answer of Richard Yates Hoffman to the amended Petition of I. Feigel, etc.

May 8.—The answer of Theodore Regensteiner, to the amended petition of I. Feigel, etc.

May 8.—The answer of Peter M. Zuncker, to the amended petition of I. Feigel, etc.

May 8.—The answer of Henry Vette to the amended petition of I. Feigel, etc.

May 10.—Order permitting answers of Hecht & Finn heretofore filed, to stand as answers to amended petition, and entering the motion of petitioning creditors to strike answer, etc., and extending time of Marcuse & Morris to answer, to May 12th.

May 10.—Order continuing hearing on amended petition and answers to May 11, 10:00 A. M.

May 11.—Order extending time of Marcuse and Morris to file their answers to two days after the hearing on the amended petition and answers of Hecht and Finn, et al., is concluded.

May 11. Order continuing the hearing on amended petition, etc., to May 12th, 10:30 A. M.

May 12.—Order continuing the hearing to May 13 at 5 P. M.

May 13.—Order continuing the hearing to May 14 at 5 P. M.

May 14.—Order continuing the hearing to May 17 at 5 P. M.

May 17.—Order re-opening cause for introduction of documentary evidence on motion of H. R. Platt, attorney for Hecht and Finn, and concluding the hearing and arguments on the amended petition for adjudication and the answers, and taking the matter under advisement.

June 18.—Withdrawal and substitution of attorneys for Frank A. Hecht.

July 1.—Order referring cause to Referee Wean for hearing on solvency, etc.

Aug. 6.—Order giving leave to Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker to file certificate of evidence approved by the court.

Aug. 6.—The certificate of evidence covering evidence offered and received and evidence offered and refused and rulings of court
954 on questions of law arising thereon, upon the hearing had upon May 10, 1920, and upon the dates following upon the partnership issue. Busby, Weber, Miller & Donovan, Attorneys for Henry Vette, Peter M. Zuncker, and Theodore Regensteiner. Donald Defrees, Stephen E. Hurley, Attorneys for Clement Studebaker, Jr., and George M. Studebaker.

Received a copy of the within notice and præcipe of record this 6th day of August, A. D. 1920. Tenney, Harding & Sherman. Ringer & Wilhartz.

Receipt of copy acknowledged but we do not represent any part to the proceeding to revise and review. Mayer, Meyer, Austrain & Platt. Rosenthal, Hamill & Wormser. Haynes & Feinberg. Gesas, Epstein & Leonard. Jacobson, Bays & Tompkins. Winston, Strawn & Shaw. Myerson & Slottow. Wetten, Matthews & Pegler. Moses, Rosenthal & Kennedy. Burry, Johnstone & Peters. Wilkerson, Cas-

sels, Potter & Gilbert. Harris, Kagy & Vanier. Stein, Mayer & David. Levinson & Hoffman.

[File endorsement omitted.]

955 & 956

Certificate of Clerk.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true, complete and correct transcript of certain portions of the record in re Ben Marcuse, Lew H. Morris, Joseph H. Finn, and Frank A. Hecht, trading as Marcuse & Company, Bankrupts, Number 28339, prepared in accordance with praecipe filed herein, as same appears from the records and files in said cause now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office at Chicago, in said District, this 13th day of August A. D. 1920. John H. R. Jamar, Clerk. [Seal.]

957 & 958

Certificate of Clerk.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 955, inclusive, contain a true copy of the Printed Original Petition to Review and Revise, and the Answer thereto, etc., printed under my supervision, and filed November 9, 1920, on which the following entitled cause was heard and determined: In the Matter of Marcuse & Company, Alleged Bankrupts; Henry M. Vette et al. vs. C. B. Giles et al., No. 2855, October Term, 1919, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-eighth day of April, A. D. 1922. Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. [Seal of the United States Circuit Court of Appeals, Seventh Circuit.]

Order of July 9, 1920.

959 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court room in the city of Chicago in said Seventh Circuit on the seventh day of October, 1919, of the October term in the year of our Lord one thousand nine hundred and nineteen and of our Independence the one hundred and forty-fourth.

Friday, July 9, 1920.

Court met pursuant to adjournment.

Present: Hon. Samuel Alschuler, Circuit Judge, presiding; Hon. Evan A. Evans, Circuit Judge; Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge.

In the Matter of MARCUSE & COMPANY et al., Alleged Bankrupts.

HENRY VETTE et al.

vs.

C. B. GILES et al.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Order Granting Leave to File Petition.

This matter coming on to be heard upon the motion of Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, the said Henry Vette, Peter M. Zuncker and Theodore Regensteiner having appeared herein by Harry P. Weber and George W. Miller, their attorneys, and the said Clement Studebaker, Jr., and George M. Studebaker having appeared herein by George T. Buckingham, Donald Defrees and Stephen E. Hurley, their attorneys, and the court being fully advised in the premises, leave is hereby granted to the said Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker to file their petition to review and revise in matters of law the order of reference entered by the Honorable Kene-saw M. Landis, one of the judges of the United States District Court, on July 1, 1920, In the Matter of Marcuse & Company, Alleged Bankrupts, being No. 28339 in Bankruptcy, in the District Court of the United States for the Northern District of Illinois, Eastern Division, and the proceedings in connection therewith; and leave is further granted to the said Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker to file with the clerk of the United States Circuit Court of Appeals for the Seventh Circuit within thirty days a certified copy of such portions of the record in said cause as may be described in a præcipe for record to be filed with the clerk of the said United States District Court; and, further, that the said clerk of the

960

said United States District Court for the District aforesaid, is ordered and directed to prepare a certified transcript of such portions of the record as may be described in the said præcipe for record to be filed with him as aforesaid, and that the same may be incorporated into the said petition to review and revise as an exhibit thereto, and marked "Exhibit C."

It is further ordered and directed that a copy of the within order be served upon C. B. Giles, John Janca, I. Fiegel, Fred Meyer, E. H. Allen, Nathan Jacobs, Harold Lachman, W. O. Frazee and Central Trust Company of Illinois, Receiver in Bankruptcy in said cause in the United States District Court, and that they, the said last named persons, and each of them be given leave to appear and answer to said petition to review and revise within thirty days after the service upon them and each of them, of the said copy of the within order.

And afterwards, to-wit: On the twelfth day of July, 1920, in the October Term aforesaid, there was filed in the office of the clerk of this court a certain Notice of Motion, which said Notice is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Seventh Circuit.

[Title omitted.]

Notice.

[Filed July 12, 1920.]

To Gesas, Epstein & Leonard, Ringer & Willhartz, Jacobson, Bays & Tompkins, Moses, Rosenthal & Kennedy:

Please take notice that the undersigned counsel for Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, having obtained leave to file and having filed in the above-mentioned court on July 9, 1920, a petition to review and revise an order entered July 1, 1920, in the above entitled cause in the District Court of the United States for the Northern District of Illinois, Eastern Division, and the proceedings in connection therewith, hereby notify you that they will appear before the Honorable Samuel Alschuler, one of the judges of the above-mentioned court, at his chambers in the Federal Building in Chicago, Illinois, at 2 o'clock p. m. on Monday, July 12, 1920, or as soon thereafter as counsel may be heard, and will then and there move the court to stay proceedings under said order so far as the same relate to any investigation or hearing as to the individual assets and liabilities of the said Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, or any or either of them until the further order of said court. You may then and there appear if you see fit. Henry P. Weber, George W. Miller, George T. Buckingham, Donald Defrees, Stephen E. Hurley, Attorneys for Petitioners.

Motion for Stay Pending Review.

Received a copy of the within Notice this 10th day of July, 1920, Moses, Rosenthal & Kennedy, Jacobson, Bays & Tompkins, Ringer & Wilhartz, Gesas, Epstein & Leonard.

[File endorsement omitted.]

962 And afterwards, on the same day, to-wit: On the twelfth day of July, 1920, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Motion For Stay Pending Review, which said Motion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

[Title omitted.]

Motion for Stay Pending Review.

Your Petitioners on review herein, Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, appearing by their respective attorneys, move the Court for an order staying certain proceedings under an order of reference entered on July 1, 1920, in the United States District Court for the Northern District of Illinois, Eastern Division, by the Honorable Kenesaw M. Landis, one of the Judges of said Court.

Your petitioners, and each of them, respectfully show:

1. That on July 9, 1920, your petitioners, jointly and each for himself, filed their Petition to Review and Revise in matters of law an order of reference entered in the said District Court on July 1, 1920, and certain proceedings in connection therewith, in the Matter of Marcuse & Company, being cause Number 28339 in Bankruptcy in the said District Court, which petition is hereby referred to and incorporated herein by reference as fully and to the same effect as if herein set forth in full.

2. That on, to-wit, the 7th day of July, A. D. 1920, counsel for petitioning creditors appeared, as did counsel for your petitioners, before Frank L. Wean, a referee in bankruptcy of the said District Court, and said cause was set down for hearing by the said Referee Wean for the afternoon of the 14th day of July, 1920, and that it was then and there stated by counsel for petitioning creditors
963 that said hearing would proceed on that day unless prior thereto such proceedings should be stayed by order of this Court; that it was then and there urged upon counsel for petitioning creditors that the said hearing should proceed in the normal and usual course by an investigation of the debts of said firm and of its resources and assets as a firm, which proceeding would require considerable time, and that during the time required for such investigation the disputed question as to whether or not your petitioners, or any of them, are or are not partners of said firm might be decided by this Honorable Court; that, notwithstanding such representations made to counsel for petitioning creditors as aforesaid, it

was then and there stated by said counsel for petitioning creditors, and before said Referee Wean, that unless such proceedings are stayed by the order of this Court before the 14th day of July, 1920, they, on behalf of such petitioning creditors, would immediately and in the first instance call your petitioners, and each of them, before the said Referee for the purpose of conducting an investigation as to their individual assets and liabilities.

3. That such procedure as is threatened to be followed by said counsel for petitioning creditors would result in a great inconvenience, loss and injury to your petitioners, as is more fully disclosed by affidavits hereto attached and made a part hereof as fully and to the same effect as if herein set forth, and that, further, such procedure would, as your petitioners here represent, be a great injustice to them and involve a waste of time and a great expenditure of money which should not be necessary until after the question whether or not your petitioners, or any of them, are partners of the said firm of Marcuse & Company, and liable for its debts and obligations, is decided by this Honorable Court.

4. That your petitioners, therefore, pray this Honorable Court that an order may forthwith issue against C. B. Giles, John Janca, I. Feigel, Fred Meyer, E. H. Allen, Nathan Jacobs, Harold Lachman and W. O. Frazee, petitioning creditors, and Central Trust Company of Illinois, receiver, in said matter of Marcuse & Company, and against Frank L. Wean, Referee in Bankruptcy, ordering and directing them, and each of them, that they shall proceed no further under the said order dated July 1, 1920, with reference to any inquiry into the individual assets and the individual liabilities of the said Henry

Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, until the further order of this Court. Henry Vette, Peter M. Zuncker, Theodore Regensteiner, By George W. Miller, Their Attorney. Clement Studebaker, Jr., George M. Studebaker, By Geo. T. Buckingham, Their Attorney. Harry P. Weber, George W. Miller, Attorney-for Henry Vette, Theodore Regensteiner and Peter M. Zuncker. Geo. T. Buckingham, Donald Defrees, Stephen E. Hurley, Attorneys for Clement Studebaker, Jr., and George M. Studebaker.

In the United States Circuit Court of Appeals for the Seventh Circuit,
October Term, A. D. 1919.

[Title omitted.]

Affidavit in Support of Application for Stay of Proceedings.

STATE OF ILLINOIS,

County of Cook, ss:

Henry Vette, being sworn on oath, states:

I am a resident of the City of Chicago, and have been for thirty-nine years.

I am the Henry Vette mentioned and referred to in the above entitled proceedings.

965 I am now engaged and have been since about 1894 in the business of packing and canning of meats and provisions as a member of the firm of Vette & Zunker, composed of myself and Peter M. Zunker.

This firm has its place of business located in the City of Chicago, Illinois, and owns the property upon which its business is located. The firm has invested in the business including the property which it uses in connection with such business, approximately from \$450,000 to \$500,000, and carries on a gross business of approximately \$2,000,000.00 per year extending substantially over the entire country. In addition to the above mentioned property, the firm owns other real estate. I have a half interest in all of the firm property.

In addition to my interest in the firm property, I have a home located in the City of Chicago which I consider worth approximately \$10,000. I own other real estate which I estimate as worth approximately \$70,000. In addition to the foregoing property I own stocks in corporations and mortgages which I consider and believe to be worth approximately \$440,000.00. As against my property I have an indebtedness consisting of a number of items aggregating a little over \$168,000.00.

All of the above property is exclusive of a claim I have against Marcuse & Co. for over \$200,000.00.

Whenever I am compelled or required under the law to do so, I will fully disclose in this proceeding my assets and liabilities in detail and the value of my assets according to my best judgment and knowledge, but because of the extensiveness of my business interests and the character of the business in which I am engaged, I feel that it would not only be an inconvenience but a disadvantage and injury to me to be required to make such a disclosure now, and I should not be required so to do until it has been definitely and finally settled by reviewing courts whether I am liable for the debts and obligations of Marcuse & Co.

Further affiant sayeth not. Henry Vette.

Subscribed and sworn to before me, a Notary Public duly commissioned and authorized to take oaths in and for and under the laws of the County and State aforesaid this 9th day of July, A. D. 1920.

Witness my hand and official seal. Walter I. Deffenbaugh, Notary Public as Aforesaid. (Seal.) My commission expires June 5th, 1924.

966 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1919.

[Title omitted.]

Affidavit in Support of Application for Stay of Proceedings.

STATE OF ILLINOIS,
County of Cook, ss:

Peter M. Zuncker being sworn on oath states:

I am a resident of the City of Chicago and have been for thirty-three years.

I am the Peter M. Zuncker mentioned and referred to in the above entitled proceedings.

I am now engaged and have been since about 1894 in the business of packing and canning of meats and provisions as a member of the firm of Vette & Zuncker composed of myself and Henry Vette.

This firm has its place of business located in the City of Chicago, Illinois, and owns the property upon which its business is located. The firm has invested in the business including the property which it uses in connection with said business, approximately from \$450,000.00 to \$500,000.00 and carries on a gross business of approximately \$2,000,000.00 per year extending substantially over the entire country. In addition to the above mentioned property the firm owns other real estate. I have a half interest in all of the firm property.

In addition to my interest in the firm property, I own a home located in the City of Chicago which I estimate to be worth approximately \$30,000.00 and I have substantial interests in the way of stockholdings in corporations which I estimate to be of the value of approximately \$200,000.00.

The above and foregoing is exclusive of a claim I have against the firm of Marcuse & Co. for approximately \$200,000.00.

967 If I am ultimately held to be liable for the debts and obligations of the firm of Marcuse & Co., I recognize that I must and I will make a disclosure as to all my property, its value, and condition according to the best of my judgment and knowledge and in detail, but I feel that I should not be put to the inconvenience and disadvantage of being required to make such a disclosure until it has been finally determined by the reviewing courts whether the creditors of Marcuse & Co. or any of the parties interested in the affairs of that alleged bankrupt firm have the right in law to call upon me for such a disclosure.

Further affiant sayeth not. Peter M. Zuncker.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the County and State aforesaid this 8th day of July, A. D. 1920.

Witness my hand and official seal. Walter I. Deffenbaugh, Notary Public as Aforesaid. (Seal.) My commission expires June 5th, 1924.

In the United States Circuit Court of Appeals for the Seventh Circuit,
October Term, A. D. 1919.

[Title omitted.]

Affidavit in Support of Application for Stay of Proceedings.

STATE OF ILLINOIS,
County of Cook, ss.

Theodore Regensteiner, being sworn on oath states:

I am a resident of the City of Chicago and have been for thirty-six years.

I am the Theodore Regensteiner mentioned and referred to in the above entitled proceeding.

968 I am now engaged through the Regensteiner Colortype Company, an Illinois corporation, with its place of business in Chicago, Illinois, in the printing and lithographing business.

I am the president, a member of the board of directors and the controlling stockholder in said company, by which I mean that I own the majority of the shares of the capital stock of that company.

This company has net assets of over one million dollars and carries on an annual business of approximately one million five hundred thousand dollars.

I also own a long leasehold on improved real estate located in the so-called loop district of Chicago. This property is improved by a seven story and basement office building in which I have between twenty-five and thirty tenants and in addition to the above mentioned property I have substantial investments in bonds and stocks of various kinds and high class character.

Whenever the time comes, that in the process of this litigation I should do so, I will, of course, fully and completely disclose my business and property affairs in detail, but as a business man I recognize the inconvenience and disadvantage to me of being compelled to make such a disclosure and I do not want to make it and feel that I should not be required to make it until it has been finally determined by the reviewing courts whether the creditors of Marcuse & Co. or any of the parties interested in the affairs of that alleged bankrupt firm have the right, in law, to call upon me for such a disclosure.

Further affiant sayeth not. Theodore Regensteiner.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the County and State aforesaid, this 8th day of July, A. D. 1920.

Witness my official seal and hand. Walter I. Deffenbaugh, Notary Public as Aforesaid. (Seal.) My commission expires June 5th, 1924.

969

Affidavit of Scott Brown.

STATE OF ILLINOIS,

County of Cook, ss:

Scott Brown, being first duly sworn, on oath deposes and says that he is a resident of Evanston, Illinois, and that for some time past he has had intimate knowledge of, and been familiar with, the business affairs and property interests of Clement Studebaker, Jr. and George M. Studebaker, who are two of the petitioners who have filed a Petition to Review and Revise a certain order, dated July 1, 1920, in the bankruptcy matter of Marcuse & Company; that the said Clement Studebaker, Jr. and George M. Studebaker (hereinafter referred to as "Studebakers") are beneficiaries in and of Studebaker Bros.' Trust, which is a fund composed of various kinds of property, the legal and equitable title whereof is in Chicago Title and Trust Company, as trustee; that Studebakers are also beneficiaries with other persons in the estate of their deceased father Clement Studebaker, Sr.; that Studebakers are interested, in most cases indirectly, in many undertakings, and in many corporations, in some of which they hold, in some form, a dominant interest, and in others in which they are interested to a lesser degree; that many of their property interests are held jointly with each other, and some with other persons or in associations or groups of persons in which others besides themselves are interested; that many of their liabilities are likewise joint with each other, and many are intermingled or in associations with other persons in relation to various enterprises, so that others besides themselves are therein interested; that the investigation and ascertainment of such assets and liabilities, and the valuation of the same, when and if contested, would entail a vast amount of evidence, accounting and analysis, and would entail an enormous amount of labor, clerical and otherwise, not only on their part, and on the part of their employees and agents, but also on the part of many other people in no wise interested in this situation.

Deponent further says that the value of the interests of the Studebakers in properties in various forms is in excess of Two Million Dollars, and that real and substantial injury would accrue to them from having their said private business affairs and all their interests, and the exact nature thereof, made a matter of public record available to everyone, including those having adverse interests in many business situations, and that such actual

970 damage in money affiant verily believes would be in excess of Fifty Thousand Dollars.

And further the affiant saith not. Scott Brown.

Subscribed and sworn to before me, a Notary Public duly commissioned and authorized to take oaths in and for and under the laws of the County and State aforesaid, this 9th day of July, A. D. 1920. Witness my hand and official seal. Vincent O'Brien, Notary Public as Aforesaid. (Seal.) My Commission expires Feb. 13-1924.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1919.

[Title omitted.]

Affidavit in Support of Application for Stay of Proceedings.

George W. Miller, being sworn on oath states:

I reside in Chicago, Illinois. I am a lawyer by profession engaged in the practice of law at the Chicago Bar and am a member of the firm of Busby, Weber, Miller & Donovan.

My firm represent Henry Vette, Peter M. Zuncker and Theodore Regensteiner in these bankruptcy proceedings and on the hearing in the United States District Court at Chicago, before Judge Landis, involving the question whether said Vette, Zuncker and Regensteiner and Clement Studebaker, Jr., George M. Studebaker and Richard Yates Hoffman were partners in the firm of Marcuse & Co. and liable for the debts and obligations of said firm, I also, at that hearing, represented the two Studebakers and Mr. Hoffman.

After Judge Landis entered the order of reference to Referee Wean, which order was entered on July 1st, 1920, and which order of reference was made for the purpose of having a hearing on the assets and liabilities up to March 11th, 1920, and, in effect, directed

the Referee to make findings of facts and conclusions of law as to the solvency up to March 11th, 1920, of said Vette,

Zuncker, Regensteiner, Clement Studebaker, Jr. and George M. Studebaker, together with Ben Marcuse, Lew H. Morris, Joseph M. Finn and Frank A. Hecht, and on the afternoon of the 7th day of July, 1920, I appeared before Referee Wean in his offices in Chicago, at which time there were present among other attorneys, Mr. Julius Moses, representing the receiver appointed in this cause, Mr. Jacob Ringer and Mr. Louis F. Jacobson, representing petitioning creditors, Mr. Henry R. Platt, representing Joseph M. Finn and Mr. Harry A. Parkin, representing Frank A. Hecht. There was a general discussion before the Referee as to the procedure to be adopted on the hearing under said order of reference. Mr. Platt suggested that the proof as to the debts of the alleged bankrupt firm be first made. According to my information derived by me from the attorney for the receiver, there are about 700 customers of said firm who, as appears from the books of said firm, have claims against said firm. Other claims which, if ultimately

allowed, may aggregate a very large amount of money are being urged. I attach to this affidavit a printed tentative report which I am informed was issued and circulated by Central Trust Co. of Illinois, Receiver of Marcuse & Co., and which will give an idea as to assets and liabilities of said firm and the manner in which the report was prepared. The taking of proof as to debts and obligations of said firm will, in my judgment, consume a large amount of time and as hearings ordinarily occur before referees and masters in chancery where many other engagements and pending causes must be taken into account is likely to extend over a number of weeks if not a few months of time.

However counsel for the petitioning creditors stated that upon the hearing before said referee under said order of reference they would proceed at once to call as witnesses the two Studebakers and people I represent namely, Messrs. Vette, Zuncker, and Regensteiner and examine them as to their assets and liabilities. Mr. Jacobson suggested that the matter be continued for one week and that subpoenas issue at once for Mr. George M. Studebaker and Mr. Clement Studebaker, Jr. I stated to the referee and the other gentlemen present that Messrs. Vette, Zuncker, Regensteiner, Clement Studebaker, Jr. and George M. Studebaker were going to file a petition to review and revise so as to have the partnership question involved passed upon by the Circuit Court of Appeals of this

972 district and that the petition was in process of preparation and almost ready for the printer. One of the gentlemen present asked me if it was the intention of counsel representing the two Studebakers and Messrs. Vette, Zuncker and Regensteiner to apply for a stay of proceedings before the referee, and I stated to them that we would do so if an attempt was made to bring in before the Referee and examine our people referring to the two Studebakers and Messrs. Vette, Zuncker, and Regensteiner; whereupon counsel for petitioning creditors stated that the first thing they would do would be to bring in these gentlemen for examination and after further discussion the matter was continued until 2 o'clock in the afternoon on the 14th of this month to come up again before the Referee and counsel for petitioning creditors stated that unless by that time an order was granted staying proceedings before the Referee, they would insist upon going on with the hearing and that they would insist upon examining the two Studebakers and Messrs. Vette, Zuncker and Regensteiner without waiting for the decision of the Circuit Court of Appeals.

Further affiant sayeth not. George W. Miller.

Subscribed and sworn to before me, a notary public duly commissioned and authorized to take oaths in and for and under the laws of the County and State aforesaid, this 9th day of July, A. D. 1920.

Witness my hand and official seal. Walter I. Deffenbaugh, Notary Public as Aforesaid. (Seal.) My commission expires June 5th, 1924.

Central Trust Company of Illinois, Receiver of Marcuse & Company.

Chicago, March 29, 1920.

Marcuse & Company, 124 So. La Salle St., Chicago, Ill.

GENTLEMEN: On March 12, 1920, the United States District Court for the Northern District of Illinois appointed the undersigned Receiver in Bankruptcy of the estate of Marcuse & Co.

You should be advised that while Marcuse & Co. were, on March 12, 1920, supposedly holding a large amount of securities on open trades for customers, an examination and audit made by the Receiver of the actual condition disclosed that only a small portion of the securities supposedly purchased and held for customers were on hand at the time of the filing of the proceedings, the larger portion thereof having been theretofore sold by Marcuse & Co. This also is the fact, but to a less extent, as to securities received as margin deposits.

It was because of this condition, and for the purpose of ascertaining the extent of the liabilities of Marcuse & Co. to its customers as of March 12, 1920, arising therefrom, that the Receiver treated all the securities held for customers as disposed of at the opening prices of the exchange on that date, and made its computation accordingly.

The enclosed statement shows the balance due to you by Marcuse & Co. resulting from such computation.

The Receiver has been gradually liquidating such securities as were on hand at the time of its appointment, and the ownership of which could not be ascertained, by selling the same on the open market as rapidly and advantageously as circumstances would permit.

The audit discloses the following as being the estimated resources and liabilities of Marcuse & Co. as of March 12, 1920, namely:

Assets.

The then amount due from customers (unsecured)	\$853,313.96
The then market value of securities pledged to secure money borrowed from banks.....	1,093,222.66
The then market value of securities in the physical possession of the Receiver	209,013.73
The then value of equities in securities held by brokers.....	248,347.79
Cash in possession of the Receiver.....	31,844.83
Total assets.....	\$2,435,742.97

Liabilities.

Amounts due bankers on secured loans.	\$863,810.82
Amounts due customers, computed as heretofore explained.....	3,301,572.88
Total liabilities.....	<u>\$1,165,383.70</u>
Total deficit.....	<u>\$1,729,640.73</u>

974 It is believed by the Receiver that the item of "amounts due from customers unsecured," is of doubtful value, and if this opinion proves correct, the deficit above indicated will be increased accordingly.

The above figures submitted by the auditors are purely tentative and are by no means final nor binding upon the Receiver or Trustee in Bankruptcy in final settlement and are subject to correction, as further investigation may develop.

Due notice will be given by the Court to creditors of the time and place for filing claims against the estate. Central Trust Company of Illinois, Receiver of Marcuse & Co. Foreman & Blumrosen, 1150—38 So. Dearborn St., Chicago; Moses, Rosenthal & Kennedy, 600—108 S. La Salle St., Chicago, Attorneys for Receiver.

(Endorsed:) Received Mar. 31 1920 1130-208 S. La Salle St. Chicago. Ans'd —, —, —, 8:30.

[Endorsement omitted.]

And afterwards, on the same day, to-wit: On the twelfth day of July, 1920, in the October term aforesaid, the following further proceedings were had and entered of record, to-wit:

975

Monday, July 12, 1920.

Court met pursuant to adjournment.

Present: Hon. Samuel Alschuler, Circuit Judge; Edward M. Hol-
loway, Clerk.

[Title omitted.]

Order Staying Proceedings.

This matter coming on to be heard upon the motion of Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, appearing by their respective attorneys, it appearing that the above named petition to review and revise in matters of law the order of reference entered on July 1, 1920, by the Honorable Kenesaw M. Landis, one of the judges of the United States District Court, in the Matter of Marcuse & Company, Alleged Bankrupt, being #28339 in Bankruptcy in the United States District Court for the Northern District of Illinois,

Eastern Division, and the court being fully advised in the premises, it is hereby ordered, adjudged and decreed that Frank L. Wean, Referee in Bankruptcy, and C. B. Giles, John Janca, I. Fiegel, Fred Meyer, E. H. Allen, Nathan Jacobs, Harold Lachman and W. O. Frazee, petitioning creditors, and Central Trust Company of Illinois, Receiver in said matter, and their respective agents and attorneys, shall proceed no further under the said order of July 1, 1920, with reference to any investigation or hearing as to the individual assets and liabilities of the said Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, or of any or either of them, until the further order of this court.

And afterwards, on the same day, to-wit: On the twelfth day of July, 1920, in the October term aforesaid, came the Petitioning and Intervening Creditors, by their counsel, Mr. Lewis F. Jacobson, Mr. Jacob Ringer and Mr. Michael Gesas, and filed in the office of the clerk of this court their appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1920.

No. 2855.

I. FEIGEL, NATHAN JACOBS, and W. O. FRAZEE, as Petitioning and Intervening Creditors,

vs.

BEN MARCUSE, LEW H. MORRIS, FRANK A. HECHT, JOS. M. FINN, Theodore Regensteiner, Henry Vette, Peter M. Zuncker, Clement Studebaker, Jr., and George M. Studebaker.

Appearance.

[Filed July 12, 1920.]

The clerk will enter my appearance as counsel for the Petitioning and Intervening Creditors. Lewis F. Jacobson, Jacob Ringer, Michael Gesas.

[File endorsement omitted.]

977 And afterwards, to-wit: On the sixth day of August, 1920, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Stipulation, which said Stipulation is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit.

[Title omitted.]

Stipulation.

[Filed Aug. 6, 1920.]

It is hereby stipulated and agreed by and between the undersigned attorneys, for and in behalf of the parties for whom they have appeared in the above entitled cause, that the time within which Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker are required to file with the clerk of the above entitled court a certified copy of certain portions of the record in the matter of Marcuse & Company, et al., alleged bankrupts, No. 28339 in the United States District Court for the Northern District of Illinois, Eastern Division, as Exhibit "C" to the petition to review and revise, which they have heretofore filed in this court, be extended ten days. Jacobson, Bays & Tompkins. Ringer & Wilharts. Gesas, Epstein & Leonard. Henry P. Weber. George W. Miller. George T. Buckingham. Donald Defrees. Stephen E. Hurley.

[File endorsement omitted.]

978 And afterwards, on the same day, to-wit: On the sixth day of August, 1920, in the October term aforesaid, the following further proceedings were had and entered of record, to-wit:

Friday, August 6, 1920.

Court met pursuant to adjournment.

Present: Hon. Samuel Alschuler, Circuit Judge; Edward M. Holloway, Clerk.

[Title omitted.]

Order Extending Time.

[Filed Aug. 14, 1920.]

This matter coming on to be heard upon the motion of Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, by their respective attorneys, and the court being fully advised in the premises,

It is hereby ordered that the time within which the above named parties are required to file with the clerk of the above entitled court a certified copy of certain portions of record in the matter of Marcuse & Company, et al., alleged bankrupts, No. 28339, in the United States District Court for the Northern District of Illinois, Eastern

Division, as Exhibit "C" to the petition to review and revise, which they have heretofore filed in this court, be, and is hereby extended ten (10) days.

And afterwards, to-wit: On the fourteenth day of August, 1920, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Proof of Service of copy of Order, which said Proof of Service is in the words and figures following, to-wit:

Received a certified copy of the within order of United States Circuit Court of Appeals for the Seventh Circuit, entered on July 9, 1920, in the matter of Marcuse & Company, et al., alleged bankrupts, this 10th day of July, A. D. 1920, at Moses, Rosenthal & Kennedy, 12 mm. Jacobson, Bays & Tompkins, 12-35. Ringer & Willhartz, 12-37. Gesas, Epstein & Leonard, 12-38. Central Trust Company of Illinois. W. T. Abbott, V. P.

Received a certified copy of the within order of United States Circuit Court of Appeals for the Seventh Circuit, entered on July 9, 1920, in the matter of Marcuse & Company, et al., alleged bankrupts, this 13th day of July, A. D. 1920. Tenny, Harding & Sherman. Mayer, Meyer, Austrian & Platt. C. B. Giles.

Received a certified copy of the within order of United States Circuit Court of Appeals for the Seventh Circuit, entered on July 9, 1920, in the matter of Marcuse & Company, et al., alleged bankrupts, this 14th day off July, A. D. 1920. Rosenthal, Hamill & Wormser. Haynes & Feinberg. E. H. Allen.

STATE OF ILLINOIS,

County of Cook, ss:

Stephen E. Hurley, being first duly sworn, upon his oath deposes and says that he served a copy of the within order on Harold Lachman by delivering a certified copy thereof to J. W. Plain at the office of Harold Lachman & Company in Room 412 of the building known as 12 North Michigan Avenue in the City of Chicago and in the County and State aforesaid on Tuesday, July 13, 1920, deponent being advised that the said Harold Lachman was absent from his office and in California but that he would return in a few days, and that thereafter upon August 6, 1920, the said Harold Lachman acknowledged to the deponent that the said copy of the within order had been personally received by him upon his return to his office, within ten (10) days after said July 13, 1920.

Deponent further says that he served a copy of the within order upon John Janca by delivering a certified copy thereof to Mrs. John Janca, his wife, at his residence- at 4533 North Knox Avenue in the City of Chicago and in the County and State aforesaid on Tuesday, July 13, 1920, and that thereafter on July 22, 1920, the said John Janca personally acknowledged to deponent that he had received the said copy of the within order.

Deponent further says that he served a copy of the within order upon Joseph H. Finn by personally delivering a certified copy thereof to him at his office at 212 West Randolph Street in the City of Chicago and in the County and State aforesaid on Thursday, July 15, 1920.

Deponent further says that he served a copy of the within order on Frank A. Hecht by personally delivering a certified copy thereof to his son, Frank A. Hecht, Jr., at the office of the said Frank A. Hecht at 500 Throop St. on July 15, 1920, in the City of Chicago and in the County and State aforesaid, deponent being then and there advised by the said Frank A. Hecht, Jr., that his father was out of the city and would not return for some months but that he, the said Frank A. Hecht, Jr., would forward the said copy of the within order to his father, the said Frank A. Hecht.

Deponent further says that he served a copy of the within order upon I. Feigel by personally delivering a certified copy thereof to him at the place of business of Hovland, Sardenson, McCohn & Company on the 6th floor of the building known as 206 West Adams St. in the City of Chicago and in the County and State aforesaid on Thursday, July 15, 1920.

Deponent further says that he personally served a copy of the within order upon Nathan Jacobs by delivering a certified copy thereof to him at his office in Room 1651 in the building located at 175 West Jackson Blvd. in the City of Chicago and in the County and State aforesaid on Monday, July 19, 1920.

Deponent further says that he served a copy of the within order upon Fred Meyer by delivering a copy thereof to him at his place of business at 131 W. Adams St. in the City of Chicago and 981 in the County and State aforesaid on July 22, 1920.

Deponent further says that he served a copy of the within notice upon Ben Marcuse by delivering a copy thereof to him at his residence at 618 Waveland Avenue in the City of Chicago in the County and State aforesaid on July 28, 1920.

Deponent further says that he served a copy of the within order upon Lew H. Morris by delivering a certified copy thereof to an adult person at his residence at 446 Diversey Avenue in the City of Chicago in the County and State aforesaid on July 28, 1920, and that thereafter, on August 10, 1920, the said Lew H. Morris personally acknowledged to deponent that the said copy of the within order had been received by him.

Deponent further says that on August 12, 1920, he enclosed a copy of the within order in an envelope addressed to William L. Frazee, at 358 Garfield Avenue, his last known address; affixed a two-cent stamp thereon, and deposited said envelope in a United States mail box.

And further deponent saith not. Stephen E. Hurley. My commission expires February 13, 1924.

Subscribed and sworn to before me, a Notary Public, in and for the County and State aforesaid, this 14th day of August, A. D. 1920. Irene E. Mulligan, Notary Public. (Seal.)

In the United States Circuit Court of Appeals for the Seventh Circuit.

[Title omitted.]

Order.

This matter coming on to be heard upon the motion of Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, the said Henry Vette, Peter M. Zuncker and Theodore Regensteiner having appeared
982 herein by Harry P. Weber and George W. Miller, their attorneys, and the said Clement Studebaker, Jr., and the said George W. Studebaker having appeared herein by George T. Buckingham, Donald Defrees and Stephen E. Hurley, their attorneys, and the Court being fully advised in the premises, leave is hereby granted to the said Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker to file their Petition to Review and Revise in Matters of Law the Order of Reference entered by the Honorable Kenesaw M. Landis, one of the Judges of the United States District Court, on July 1, 1920, in the Matter of Marcuse & Company, Alleged Bankrupts, being Number 28,339 in Bankruptcy, in the District Court of the United States for the Northern District of Illinois, Eastern Division, and the proceedings in connection therewith; and leave is further granted to the said Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker Jr., and George M. Studebaker to file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit within thirty days a certified copy of such portions of the record in said cause as may be described in a præcipe for record to be filed with the Clerk of the said United States Circuit Court; and, further, that the said Clerk of the United States District Court, for the District aforesaid, is ordered and directed to prepare a certified transcript of such portions of the record as may be described in the said præcipe for record to be filed with him as aforesaid, and that the same may be incorporated into the said Petition to Review and Revise as an exhibit thereto, and marked "Exhibit C."

It is further ordered and directed that a copy of the within order be served upon C. B. Giles, John Janca, I. Feigel, Fred Meyer, E. H. Allen, Nathan Jacobs, Harold Lachman, W. O. Frazee and Central Trust Company of Illinois, Receiver in Bankruptcy in the said cause in the said United States District Court, and that they, the said last named persons, and such of them, be given leave to appear and answer to said petition within thirty days after the service upon them, and each of them, of the said copy of the within order. Samuel Alschuler, Chief Judge.

983

Clerk's Certificate.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward H. Holloway, Clerk of the United State Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from one to two, inclusive, contain a true copy of the order entered in this Court on July 9, 1920, in the matter of Marcuse & Company, *in the case of* et al., alleged bankrupts, Henry Vette et al., Petitioners, vs. C. B. Giles, et al., Respondents, No. 2855, October Term 1919, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 9th day of July, A. D. 1920. Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal.)

[File endorsement omitted.]

984 And afterwards, to-wit: On the fourteenth day of August, 1920, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Exhibit "C" to the Original Petition to Review and Revise, which said Exhibit "C" is not copied here, as the same appears on page 42 of the printed Petition to Review and Revise certified herewith.

And afterwards, to-wit: On the fourth day of October, 1920, in the October term aforesaid, came the Intervening Creditor, Henry Lachman, by his counsel Mr. Henry H. Kennedy, Mr. Julius Moses, Mr. Hamilton Moses, Mr. S. Sidney Stein and Mr. Walter Bachrach, and filed in the office of the clerk of this court their appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 19—.

No. 2855.

I. FEIGEL, NATHAN JACOBS, and W. O. FRAZEE, as Petitioning &
Intervening Creditors,

vs.

BEN MARCUSE, LEW H. MORRIS, FRANK A. HECHT, JOS. M. FINN,
Theodore Regensteiner, Henry Vette, Peter M. Zunker, Clement
Studebaker, Jr., and George M. Studebaker.

Appearance.

[Filed Oct. 4, 1920.]

The clerk will enter my appearance as counsel for the Henry
Lachman, Intervening Creditor. Henry H. Kennedy. Julius Moses.
Hamilton Moses. S. Sidney Stein. Walter Bachrach.

[File endorsement omitted.]

985 At a regular term of the United States Circuit Court of
Appeals for the Seventh Circuit, begun and held in the United
States Court room in the city of Chicago, in said Seventh Circuit on
the fifth day of October, 1920, of the October term in the year of our
Lord one thousand nine hundred and twenty and of our Independ-
ence the one hundred and forty-fifth.

And afterwards, to wit: On the fourth day of November, 1920, in
the October term last aforesaid, came the Intervening Petitioner,
Jacob Block, by his counsel, Mr. Julius Stern, and filed in the office
of the clerk of this court his appearance, which said appearance is in
the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1919.

No. 2855.

In the Matter of MARCUSE & COMPANY, Alleged Bankrupts.

Appearance.

[Filed Nov. 4, 1920.]

The clerk will enter my appearance as counsel for the Intervening
Petitioner, Jacob Block. Julius Stern, 1014 Garrick Bldg.

[File endorsement omitted.]

And afterwards, to wit: On the eighteenth day of November, 1920, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Notice, which said Notice is in the words and figures following, to wit:

986 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1919.

[Title omitted.]

Notice.

To George W. Miller, 1639-38 S. Dearborn Street, and Defrees, Buckingham & Eaton, 1720-105 S. La Salle St., Attorneys for Petitioners:

Please Take Notice that on Thursday, November 18, 1920, we shall appear before the court of Appeals, in the room usually occupied by it as a court room in the Federal Building, in the city of Chicago, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and shall make formal motion to the court, on behalf of our respective clients, to advance and set for oral argument for a day certain, the above entitled cause—at which time and place you may appear if you see fit. Lewis F. Jacobson, Michael Gesas, Jacob Ringer, Julius Moses, Attorneys for Respondents.

Received copy of the above notice this 17th day of November, A. D. 1920. Harry P. Weber and George W. Miller, Attorneys for Petitioners.

987 STATE OF ILLINOIS,
County of Cook, ss:

Bernard Boyarsky, being first duly sworn, on oath says he served the within notice on the within-named Defrees, Buckingham & Eaton by leaving a true and correct copy thereof with Harry E. Heeren, who was then and there in charge of said office. Bernard Boyarsky.

Subscribed and sworn to before me this 17th day of November, A. D. 1920. Henry S. Moser, Notary Public. (Seal.)

(Endorsed:) Filed Nov. 18, 1920. Edward M. Holloway, Clerk.

And afterwards, to wit: On the seventeenth day of December, 1920, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Motion Suggesting Death of Frank A. Hecht, which said Motion is in the words and figures following, to wit:

In the Circuit Court of Appeals, Seventh Circuit.

[Title omitted.]

Motion Suggesting Death of Frank A. Hecht.

[Filed Dec. 17, 1920.]

Now come Frank A. Hecht, Jr., and Clara K. Hecht, as Executors of the Will of Frank A. Hecht, deceased, together with Joseph M. Finn, and suggest to the court that Frank A. Hecht died on November 22, 1920, and thereupon move the court that his said Executors be allowed to file, together with Joseph M. Finn, their answer
988 herein and brief in support thereof on or before December 24, 1920. Horace Kent Tenney, Harry A. Parkin, Attorneys for Executors of Frank A. Hecht. Levy Mayer, Carl Meyer, Henry Russell Platt, Attorneys for Joseph M. Finn.

[File endorsement omitted.]

And afterwards, on the same day, to wit: On the seventeenth day of December, 1920, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Friday, December 17, 1920.

Court met pursuant to adjournment.

Present: Hon. Francis E. Baker, Circuit Judge, presiding; Hon. Samuel Alschuler, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge.

[Title omitted.]

Order on Motion.

It appearing to the court that Frank A. Hecht died on November 22, 1920, and his death having been suggested on the record, it is ordered that leave be, and it is hereby given to Frank A. Hecht, Jr., and Clara K. Hecht, as Executors of the Will of Frank A. Hecht, deceased, to file with Joseph M. Finn, their answer herein and a brief in support thereof on or before December 24, 1920.

989 And afterwards, to wit: On the twenty-first day of December, 1920, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Answer of the Executors of Frank Hecht, Deceased, and Joseph M. Finn, which said Answer is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit,
October Term, A. D. 1919.

[Title omitted.]

**Answer of the Executors of Frank Hecht, Deceased, and
Joseph M. Finn.**

[Filed Dec. 21, 1920.]

Horace Kent Tenney, Harry A. Parkin, Attorneys for Executors
of Frank A. Hecht.

Levy Mayer, Carl Meyer, Henry Russell Platt, Attorneys for
Joseph M. Finn.

[File endorsement omitted.]

990

[Title omitted.]

Now come Joseph M. Finn and also Frank A. Hecht, Jr., and
Clara K. Hecht, as executors of the will of Frank A. Hecht named
in the petition herein, who died on November 22, 1920, and show
the court as follows:

1. On March 11, 1920, a petition in bankruptcy was filed in the
United States District Court for the Northern District of Illinois,
Eastern Division, by C. B. Giles, John Janka and I. Fegcl, seeking
an adjudication of bankruptcy against the firm of Marcuse & Co.,
in which firm Joseph M. Finn and Frank A. Hecht were special
partners. Thereafter certain proceedings were taken in that court
which are more particularly set forth in the petition filed in this
court by Henry Vette, Peter M. Zunker, Theodore Regensteiner,
Clement Studebaker, Jr., and George M. Studebaker, and in the
transcript of the record of the District Court filed herein. For
brevity and to avoid repetition, the allegations of that petition, so
far as they allege the proceedings which took place in the
991 District Court, are hereby referred to with the same effect as
if those allegations were made herein at length; and for
greater certainty, also, reference is hereby made to the transcript of
the record on file herein for further details of the proceedings in the
District Court.

2. On March 17, 1920, Joseph M. Finn and Frank A. Hecht
tendered to the Central Trust Company of Illinois, as receiver in
bankruptcy of Marcuse & Company's proceedings in the District
Court, the sum of forty-six thousand dollars (\$46,000), which was
the full amount of all interest, income and profits declared and paid
by the firm of Marcuse & Company as due to Frank A. Hecht and
Joseph M. Finn, either as special partners in the firm of Marcuse
& Company or otherwise, and the full amount paid by the firm of
Marcuse & Company to the Chicago Title and Trust Company as
trustee under the Hecht-Finn trust mentioned in the record herein,

and which was distributed by that company as such trustee to all the beneficiaries of the trust, including the amounts so distributed not only to Joseph M. Finn and Frank A. Hecht, but that which was so distributed to Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George Studebaker. And at the same time they renounced any claim against the assets of the copartnership of Marcuse & Company arising out of the investment of the aggregate sum of one hundred and ninety thousand dollars (\$190,000) as special partners of that firm, and all interest in the profits of its business or other compensation by way of interest. The purpose of the payment of said money, and the circumstances which induced its payment and under which it was paid, are correctly set forth in the written statement of March 17, 1920, which was delivered to the Central Trust Company contemporaneously with the tender of the money, and also in the answers of Joseph M. Finn and Frank A. Hecht filed in the District Court and more fully set out in the transcript of the record of that court on file herein; and to avoid repetition reference is hereby made to said answers with the same effect as though the allegations thereof were herein set forth at length. The money so tendered was by order of the District Court deposited with the clerk of the court, without prejudice and he still retains it. (Rec., 105.)

3. Under the original arrangement for the formation of the limited partnership of Marcuse & Company, made on or about April 2, 1917, which is referred to in the transcript of the record herein,

it was agreed that a special partnership under the laws of 992 Illinois should be formed under the firm name of Marcuse & Company, in which Ben Marcuse and Lew H. Morris were to be general partners and Joseph M. Finn, Frank A. Hecht, Richard Yates Hoffman, Henry Vette, Peter Zuncker and Theodore Regensteiner were to be special partners. Richard Yates Hoffman, who was to appear as being nominally one of the special partners and who, in fact, signed the articles of partnership which were prepared for that purpose, was, with the knowledge of all parties, acting on behalf of Clement Studebaker, Jr., and George M. Studebaker, from whose funds was to be contributed the money which he was to pay in as his contribution to the capital as a special partner and who were to be entitled to all of the benefits which might accrue to him as such. Said Hoffman had no real personal interest in the matter, but was one of the attorneys for Clement Studebaker, Jr., and George M. Studebaker and acted solely as their agent or trustee in the matter. After the execution of the articles of special partnership above referred to, it was ascertained that the rules of the New York Stock Exchange prohibited a partnership dealing thereon from having more than two persons designated as special partners; and thereupon, for the purpose of formally complying with this rule, while accomplishing substantially the same result, it was agreed between all of the parties that Joseph M. Finn and Frank A. Hecht should become nominally the special or limited partners in the partnership but that their interest should be held

for the benefit of all the persons who had thus agreed to contribute to the capital of said firm in the proportions of their contributions; and that to accomplish this purpose Joseph M. Finn and Frank A. Hecht contemporaneously with the execution of the articles of partnership and as a part of the transaction, should execute a trust agreement constituting the Chicago Title & Trust Company as trustee and providing for the issuance of certificates of interest under the trust thereby created; that such certificates of interest should be delivered to the persons who had thus agreed to be special partners for the amount of their respective contributions; and that the Chicago Title & Trust Company under such trust agreement should collect, receive and distribute the income payable or distributable under the terms of the special or limited partnership agreement to Joseph M. Finn and Frank A. Hecht as special partners; and that

993 the form of the special partnership agreement should be changed so that upon its face it would purport to show only

Joseph M. Finn and Frank A. Hecht as special partners without disclosing the fact that the other parties above named had contributed to the special capital and were entitled to a corresponding benefit and interest in any profits distributable to those who appeared as special partners on the face of the agreement. This change in the form of the transaction was carried out by having new articles of partnership executed on June 30, 1917, in which Ben Marcuse and Lew H. Morris appeared as general partners, and Joseph M. Finn and Frank A. Hecht as special partners, and by the execution of a trust agreement with the Chicago Title & Trust Company and the issuance thereunder of certificates of interest to each one of the persons who had thus contributed to the special capital of said firm for the amount of their contributions, viz., to Joseph M. Finn, Frank A. Hecht, Henry Vette, Peter M. Zuncker, Theodore Regensteiner, and to Richard Yates Hoffman, who was attorney or trustee for Clement Studebaker, Jr., and George M. Studebaker as above stated. For the purpose of greater certainty, reference is hereby made to the original articles of special partnership between said parties dated April 2, 1917, to the new articles dated June 30, 1917, to the Hecht-Finn trust agreement with the Chicago Title & Trust Company, and to the certificates of interest thereunder issued to each one of the parties above named, all of which are referred to in the answers of Joseph M. Finn and Frank A. Hecht in the District Court and are shown in the transcript of the record of that court on file herein. Reference is also made to the statements in the answer of Joseph M. Finn and Frank A. Hecht in the District Court with reference to the purpose of this change in the form of the papers and the circumstances which brought it about, and connected with its execution.

4. In the District Court, in pleadings and in argument and in connection with the evidence heard by the court, Joseph M. Finn and Frank A. Hecht insisted that the District Court had no jurisdiction over them or their property; that they were not chargeable as bankrupts or liable to an adjudication of bankruptcy in said pro-

ceedings; that they were not general partners in the firm of Marcuse & Company nor liable as such for any of its debts or obligations; and that if any such liability could exist or any right against them could arise because of the execution of the articles of special partnership of June 30, 1917, it had been prevented and
 994 discharged by the payment by them of the forty-six thousand dollars (\$46,000) above referred to and their renunciation of any interest in the assets or profits of the business of Marcuse & Co. in accordance with the laws of Illinois as hereinabove set forth. And they also set up and insisted that, although they denied that either of them, or any of the other parties other than Ben Marcuse and Lew H. Morris, were general partners in the firm of Marcuse & Co. or liable for any of its debts, or subject to the jurisdiction of the District Court in bankruptcy, yet that if Joseph M. Finn and Frank A. Hecht should be held in law to be such general partners or liable in any way for the debts or liabilities of the firm, and subject to the jurisdiction of the District Court, then that Richard Yates Hoffman, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker likewise were and should be held to be general partners and liable for the debts of said partnership, and that they should be made parties to the bankruptcy proceeding for the purpose of having that question determined. The District Court, however, overruled the contention of Joseph M. Finn and Frank A. Hecht that they were not general partners in said firm or liable for its debts, and that the District Court had no jurisdiction over them or their property, but held, as shown in the orders referred to in the petition of Henry Vette et al., in this court and in the transcript of the record, that Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Henry Vette, Peter M. Zuncker and Theodore Regensteiner, were general partners in the firm of Marcuse & Co. and liable for its debts; and that the so-called special partnership, by reason of failure to comply with the Illinois statutes, was a general partnership; and thereupon entered the order of July 1, 1920, referring said cause to Referee Wean, which order is more particularly set out in the petition of Henry Vette et al. and shown in the record herein.

5. Joseph M. Finn and the executors of Frank A. Hecht now claim and insist in this court that the proceedings of the District Court in said cause and its order of July 1, 1920, were erroneous in the matter of law in the following particulars:

1. In finding that Joseph M. Finn and Frank A. Hecht became or were general partners in the firm of Marcuse & Co. or were liable for its debts in any way, and, as such partners, were subject
 995 to the jurisdiction of the District Court in said bankruptcy proceeding; whereas the court should have found, ordered and decreed that neither Joseph M. Finn or Frank A. Hecht were general partners in the firm of Marcuse & Co. or liable as such for its debts and should have entered an order dismissing the bankruptcy proceedings as to them.

2. In entering the order of July 1, 1920, referring the cause to Referee Wean for a hearing on the assets and liabilities of the firm of Marcuse & Co. up to March 11, 1920, and directing that he make findings of fact and conclusions of law as to the solvency to that date of Joseph M. Finn and Frank A. Hecht as well as the other parties named in the order as composing the firm of Marcuse & Co.; whereas the District Court should have found and held that neither Joseph M. Finn nor Frank A. Hecht were general partners of the firm of Marcuse & Co. or liable for its debts in any way or subject to the jurisdiction of the District Court in said proceedings or liable to be proceeded against as bankrupts.

3. That the District Court should have found, ordered and decreed that Joseph M. Finn and Frank A. Hecht did not become and were not liable as general partners or otherwise for the debts and obligations of the firm of Marcuse & Co., but that if by reason of any mistake in law in connection with the execution of the papers or the organization of that firm, or for any other reason, they could be held liable for such debts, then by their tender and payment of the sum of forty-six thousand dollars (\$46,000) above referred to and their renunciation of any interest in the profits of the business of Marcuse & Co., or other compensation by way of income, and by their compliance with the provisions of the statutes of Illinois in that respect, they were discharged from any liability for the debts or obligations of said firm, and prevented any such liability from attaching; and that the District Court had no right or jurisdiction thereafter to proceed against them as bankrupts or for the purpose of determining their alleged liability for the debts of said firm.

6. Joseph M. Finn and the executors of Frank A. Hecht therefore claim and ask that the order and decree of the District Court above referred to holding them liable for the debts of the firm of Marcuse & Co. and liable to the jurisdiction in bankruptcy of the District

996 Court therein, should be revised by this court and reversed and set aside, together with the order of July 1, 1920, above referred to, and that the District Court should be directed to dismiss such proceedings as against them and to take no further proceedings so far as they are concerned in connection with the affairs of said firm.

7. If, however, this court should hold that by reason of the facts shown in the record, or of any mistake in connection with the organization of said special partnership, Joseph M. Finn and Frank A. Hecht were general partners in the firm of Marcuse & Co. or liable as such, and subject to the jurisdiction of the District Court in said bankruptcy proceedings, then it should also order and adjudge, as did the District Court, that Clement Studebaker, Jr., George J. Studebaker, Henry Vette, Peter M. Zunker and Theodore Regensteiner, were to the same extent general partners in said firm or liable for its debts and subject to the same jurisdiction in bankruptcy of the District Court in said proceedings. Horace Kent Tenney, Harry A. Parkin, Attorneys for Executors of Frank A. Hecht, Deceased. Levy Mayer, Carl Meyer, Henry Russell Platt, Attorneys for Joseph M. Finn.

Order of February 9, 1921.

And afterwards, to-wit: On the ninth day of February, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

997

Wednesday, February 9, 1921.

Court met pursuant to adjournment.

Present: Hon. Francis E. Baker, Circuit Judge, presiding; Hon. Samuel Alschuler, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk.

Before Hon. Francis E. Baker, Circuit Judge.

[Title omitted.]

Order Extending Time.

This matter coming on to be heard upon motion of Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, the petitioners herein, by their respective attorneys, and it appearing that the parties to the above entitled cause, by their respective attorneys, have stipulated and agreed that the time within which the said petitioners are required to file their reply brief in the above entitled cause, be extended to and including February 25, 1921, and the court being fully advised in the premises,

It is hereby ordered that the time within which Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, the petitioners herein, are required to file their reply brief be, and the same is hereby extended to and including February 25, 1921.

998 And afterwards, to-wit: On the twenty-fifth day of February, 1921, in the October term last aforesaid, came the Creditors, George B. Gifford, et al., and filed in the office of the clerk of this court their appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1920.

No. 2855.

[Title omitted.]

Appearance.

The Clerk will enter my appearance as counsel for George B. Gifford, et al., Creditors. Wm. Burry. F. B. Johnstone. G. M. Peters.

(Endorsed:) Filed Feb. 25, 1921. Edward M. Holloway, Clerk.

999 And afterwards, to-wit: On the seventh day of March, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Notice, which said Notice is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit,
October Term, A. D. 1919.

[Title omitted.]

Notice.

[Filed Mar. 7, 1921.]

To George W. Miller & Harry P. Weber, Counsel for Petitioners, Vette, Zuncker & Regensteiner; George T. Buckingham, Donald Defrees & Stephen E. Hurley, Counsel for Petitioners Clement Studebaker, Jr., & Geo. M. Studebaker; Lewis F. Jacobson, Solicitor for Petitioning Creditors; Jacob Ringer, Michael Gesas & Guy M. Peters, Solicitors for certain other Intervening Creditors; William Burry, F. B. Johnstone & G. M. Peters, Solicitors for Intervening Creditors:

Please Take Notice that we shall on March 7th, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, appear in the chambers of the United States Circuit Court of Appeals and move the court to set for oral argument at an early date, the above
1000 entitled cause, at which time and place you may be present, if you see fit. Moses, Rosenthal & Kennedy, Harry P. Weber, George W. Miller, Counsel for Petitioners, Vette, Zuncker & Regensteiner. Geo. T. Buckingham, Donald Defrees, Stephen E. Hurley, Counsel for Clement & Geo. M. Studebaker. Lewis F. Jacobson, Solicitor for Petitioning Creditors. Ringer & Wilhartz, Michael Gesas, Wm. Burry, G. M. Peters, F. B. Johnstone, Counsel for Intervening Petitioners.

[File endorsement omitted.]

1001 And afterwards, on the same day, to-wit: On the seventh day of March, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Monday, March 7, 1921.

Court met pursuant to adjournment.

Present: Hon. Francis E. Baker, Circuit Judge, presiding; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk.

Hearing, May 2, 1921.

Before Hon. Samuel Alschuler, Circuit Judge.

[Title omitted.]

Order Setting Cause for Hearing.

On motion of Mr. Julius Moses, counsel for one of the respondents, It is ordered that this cause be, and the same is hereby set down for hearing on April 28, 1921.

And afterwards, to-wit: On the second day of May, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

1002

Monday, May 2, 1921.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Francis E. Baker, Circuit Judge, presiding; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk; John J. Bradley, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

[Title omitted.]

Hearing.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. George W. Miller, counsel for petitioner, Henry Vette, by Mr. George T. Buckingham, counsel for petitioners Clement Studebaker, Jr., and George M. Studebaker, by Mr. Horace Kent Tenney, and Mr. Henry Russell Platt, counsel for executors of Frank Hecht and Joseph M. Finn, by Mr. Julius Moses, counsel for Harold Lachman, intervening petitioner and Central Trust Co. of Illinois, Receiver, etc., and by Mr. G. M. Peters and Mr. William Burry, counsel for George B. Clifford, et al., and the court having heard the same takes this matter under advisement.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the city of Chicago, in said Seventh Circuit, on the fourth day of October, 1921, of the October term in the year of our

1003 Lord one thousand nine hundred and twenty-one and of our Independence the one hundred and forty-sixth.

And afterwards, to-wit: On the twelfth day of January, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court the Opinion of the court, which said Opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1921, January Session, 1922.

No. 2855.

In the Matter of MARCUSE & Co., Alleged Bankrupts.

HENRY VETTE, PETER M. ZUNCKER, THEODORE REGENSTEINER, Clement Studebaker, Jr., and George M. Studebaker, Petitioners,
vs.

C. B. GILES, JOHN JANCA, I. FIEGEL, FRED MAYER, E. H. ALLEN, et al., Respondents.

Petition to Review and Revise Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before Alschuler, Evans, and Page, Cir. JJ.

Opinion, Alschuler, J.

Petitioners seek review and revision of an order of the District Court of July 1, 1920, finding in effect that petitioners, and Hecht, Finn, Marcuse and Morris were general partners of the firm of Marcuse & Co., against which original and supplemental petitions in bankruptcy had theretofore been filed, alleging all to be general partners, and referring the petition to a referee to ascertain the solvency of all of them as "composing the firm of Marcuse & Co." After filing of the petition to review and revise, Hecht and Finn, though not petitioners, joined in the petition and asked review and revision of the 1004 order. They will, with the others, be considered and referred to as petitioners, Hecht, since deceased, appearing by his executor.

The record discloses that under date of April 2, 1917, all the alleged partners except the Studebakers (one Hoffman signing in his own name, but in fact as representing the Studebaker interest), executed an agreement which provided for carrying on at Chicago a brokerage business of buying and selling on commission stocks, bonds, grains, etc., for a period of five years from such date, under firm name of Marcuse & Co.; that such firm be a limited partnership under the statute of Illinois, Marcuse and Morris the general partners, and the others special partners; the contributions of the latter to be, Hecht \$25,000, Hoffman \$50,000, Vette \$30,000, Zuncker \$25,000, Finn \$31,500 and Regensteiner \$28,500, total \$190,000; that the business be conducted and managed by Marcuse and Morris, they to receive named salaries, and that on the contributions of Marcuse, Morris and of the special partners should be paid interest at 6% per annum; that thereafter 25% of the net profits be paid to Marcuse to be applied by him on certain certificates which he would issue representing debts due from Von Frantzius & Co. (then in bankruptcy), all of such

limited partners, except Vette and Zuncker, being large creditors of the Von Frantzius concern; and that after such certificates are paid, the said 25% should be paid to all the parties to the agreement except Morris; that 10% of the net profits of the business was payable to Morris, and the balance of profits was to be divided periodically between the parties in proportion to their contributions to the whole capital; that the special partners be limited in their liability to the amounts respectively contributed to the capital, and that they should have no liability for debts of the partnership beyond such contributions; that Marcuse and Morris should be in charge of and carry on the business, and that the special partners shall have right to examine the books and have them audited, and in certain contingencies to have the business liquidated. After execution of the agreements they were left with one of the lawyers pending carrying out of certain conditions, mainly the dismissal of the Von Frantzius bankruptcy, proceedings, with which concern Marcuse had been in some way connected.

One of the contributions of Marcuse toward the firm's capital was a seat on the New York Stock Exchange estimated at the time then worth \$68,000. When in New York shortly after the agreement was signed, Marcuse learned that under the practice of the New York Stock Exchange, firms doing business there were not permitted to have more than two special partners, who must not be engaged in any other business. Marcuse at once notified his attorney at Chicago, and after further negotiation between the parties concerned or their representatives, another agreement was signed June 30, 1917 (but dated April 2, 1917), wherein the general partners were stated to be Marcuse and Morris, and the special partners Hecht and Finn. The stated objects of the partnership, the name and the details respecting rights, duties and immunities of the parties, and the character and amount of capital contributions were in all essential features the same as under the first contract, except that Hecht and Finn, the special partners, each agreed to contribute \$95,000, and the term was five years from July 1, 1917. At the same time there was executed by Hecht and Finn an instrument under date of June 30, 1917, known as the "Hecht-Finn Trust," in which Hecht and Finn were named as trustees, wherein after reciting the last named partnership agreement as being attached as an exhibit, and that Hecht and Finn held in trust all interest in the assets and income coming to them under said partnership agreement, it is provided that the trustees shall direct that any distribution to be made to them by the partnership under the terms of the partnership agreement be paid over by the partnership to the Chicago Title & Trust Company on account of the "Hecht-Finn Trust," to be by the Chicago Title & Trust Co. distributed among the holders of trust certificates under the Hecht-Finn Trust. It was provided that these trust certificates should be issued by the Chicago Title & Trust Co. to evidence 380 shares each of \$500, and that the interest represented should be subject to the terms and conditions of the Hecht-Finn Trust; that the certificates were transferable only upon the books of

the Chicago Title & Trust Co., and that the original certificate holders and holdings should be, Hecht 50, Finn 63, Hoffman 100, Regenstein 57, Vette 60 and Zunker 50, a total of 380, or \$190,000. It was agreed that the profits earned by the partnership should be drawn out at least twice a year, and the Hecht-Finn share be paid by the partnership to the Chicago Title & Trust Co., and by it ratably distributed among the registered holders of the certificates. It was provided that in certain contingencies the certificate holders might name an auditor to audit the accounts of the firm, and that in the case of the death of Hecht and Finn, certificate holders might choose another to be the special partner in the concern.

1006 The trust instrument was by endorsement thereon assented to by the Chicago Title & Trust Co. and by Marcuse and Morris, who agreed to do all the thing- therein provided to be done by the partnership. On June 30 the parties met and delivered their respective checks for the amount of their several contributions (representing in each case the amount of the Hecht-Finn Trust certificate holding), the checks of the certificate holders being made to Hecht and Finn who endorsed them to the firm. The check of the Studebaker interest was one of the Studebaker Bros. Trust to Hoffman, who endorsed it to Hecht and Finn as trustees, they in turn endorsing it to Marcuse & Co. Some days later the trust certificates, dated June 30, were issued in the amounts and to the persons as stated, the Studebaker certificate being issued to Hoffman, who at once endorsed it over to Mr. Gardner, Secretary of the Chicago Title & Trust Co., for the Studebaker Bros. Trust. A certificate of limited partnership, drawn in accordance with the then limited partnership law of Illinois, was duly executed. It was dated April 2, signed by Marcuse, Morris, Hecht and Finn, recited contribution of \$95,000 each by Hecht and Finn, and that the partnership was to commence July 1, 1917, and terminate June 30, 1922. Acknowledgment and oath were dated June 30. The first partnership contracts were never delivered, and it was testified that some time in July they were cancelled by tearing off the signatures thereon.

June 30, 1917, was Saturday, and the banks and county offices closing at noon, the transaction could not be completed that day. The following Monday, July 2, the certificate of limited partnership was filed in the office of the County Clerk of Cook County, and the checks were all deposited to the credit of the firm, excepting that of Hecht. As to this Hecht had requested Marcuse to withhold temporarily deposit of it, and it was not deposited until about the end of July. It appears that Hecht's bank account was during all that month prior to the deposit of his check, much smaller than the amount of this check. His banker testified that had the check been deposited at any time it would have been paid regardless of his balance. The supposed limited partnership of Marcuse & Co. began to transact business July 2, 1917 (although for some time theretofore Marcuse and Morris had been carrying on the brokerage business under the same name at the same location), and continued in business until the filing of the petition in bankruptcy in March, 1920.

1007 The "Studebaker Bros. Trust" was made in 1916 between petitioners George M. and Clement Studebaker, "Grantors," the Chicago Title & Trust Company, "Trustee," and Scott Brown, "Manager." It recites that the grantors had delivered to the trustee certain moneys and properties of value as stated in the schedules, and contemplated the delivery of other money and property owned by the grantors, and that the grantors are desirous of creating such money and property into a trust fund to be employed and operated for the use of the grantors; that the corpus of the trust fund shall be ultimately divided between the grantors in proportion to their contributions thereto. It sells, assigns and transfers to the trustee all such such moneys and properties, to be held by the trustee under the enumerated terms of the trust. Brown was to be manager, in charge of the office, and to keep books of account, and with the grantors constituted the first board of directors. The directors had power to direct the policy of the trust, and the investment of the trust funds, and Brown was subject to removal as director by the other two. He was to receive a salary, and had a contingent interest in the profits of the trust. The grantors were to be beneficially interested in the trust fund and its income and profits in proportion to their contribution.

On July 1, 1917, there became effective in Illinois the Uniform General and Special Partnership Statutes. The latter made radical changes in the law of Illinois regarding limited partnerships, in the matter of their formation and manner of manifesting same, and provided inter alia that thenceforth there shall be no special or limited partnerships formed in the State of Illinois for carrying on brokerage business. It repealed the prior statute on limited partnerships.

Shortly after it appeared in the bankruptcy proceedings that it was contended on behalf of creditors of the firm that no limited partnership was in fact effected, and that all the petitioners herein became under the law general partners with Marcuse and Morris, Hecht and Finn unconditionally tendered and paid into Court \$46,000 for the alleged bankrupt estate by way of interest and profit paid out by the firm to the investors of the entire \$190,000 since the organization of the firm, including interest thereon from time of payment, such payment being made on the theory that thereby they were relieved from general partnership liability by virtue of sec. 11 of the Uniform Limited Partnership Act. The uncontradicted evidence is

1008 that the amount thus paid was sufficient to cover these items.

The payment, although of an amount equal to what was thus received by all the certificate holders, was made by Hecht and Finn without the consent or approval of the others, and without contribution on their part thereto.

Apart from the documentary evidence, there was oral evidence tending to show that the first limited partnership contract was completely abandoned, and that thereafter the Studebakers and Vette and Zuncker absolutely declined to enter into any limited partnership whatever, and that the final contract, including the Hecht-Finn Trust, was in good faith what it purported to be, and to no extent a

device for carrying out the plan of the first contract, and circumvent the rule of the New York Stock Exchange respecting limited partners. Other oral evidence tended to establish such intended circumvention as the real purpose of the later papers, and that the true intent of all the parties was to carry out the terms of the limited partnership contract as it was first proposed.

Opinion by ALSCHULER, *Cir. J.*, after making foregoing statement:

The primary issue is whether under above stated facts petitioners are liable as general partners with Marcuse and Morris. Then there is the question whether, in case Hecht and Finn are so liable, the liability can be extended also to the other petitioners, who do not by the finally executed contract purport to have entered into any partnership arrangement of any sort, and the further question whether the Studebakers can in any event be held general partners in view of the fact that the Studebaker contribution was made by and for "Studebaker Bros. Trust." The various contentions will be stated as they are below considered.

For respondents it is strongly urged that the reduction of the first agreed number of special partners from five to two, and the "Hecht-Finn Trust," with certificates to manifest the interest of each contributor, was a fraud and a device conceived for the purpose of avoiding the objection of the New York Stock Exchange to limited partnerships having more than two special partners, and to any special partners being engaged in other business. There was evidence from which the District Court could have reached this conclusion: and doubtless it did so conclude; and such conclusion of fact, reached

1009 upon contradictory evidence, we may not disturb in this proceeding to review and revise as to the law. But would such finding warrant the conclusion that the ostensible limited partners, and the certificate holders all became general partners with Marcuse and Morris? Applying to the transaction the epithet of fraud does not change its true nature or its incidents. If it had been intended that all should be general partners, and the device was for the purpose of concealment, and protection of some from general liability, the court would look through the form to the actual intent and purpose of the parties. But the record affords not even suggestion of such intent. If the contribution of \$190,000 was in good faith made to the capital of the partnership, it is not readily understandable what material difference it would make whether it was in fact contributed by two or by twenty. It does not appear that by such device to avoid the stock exchange ruling, the creditors of the partnership were in any degree defrauded or periled. If the New York Stock Exchange is a creditor, and has been to its detriment misled through the alleged fraudulent device, its rights and remedies against those who participated therein remain unaffected by the bankruptcy. But in the entire absence of any showing of detriment occasioned thereby to the creditors generally, or in fact to any of them, the utmost that could be visited upon the participants of this

deception would be to hold that they occupy toward this partnership, and its creditors, the same relation as do Hecht and Finn, viz.: that of such who from July 1, 1917, erroneously believed and assumed that they then entered upon a limited partnership. Assuming therefore that the transactions of June 30 and July 2 were colorable in that, while a limited partnership was intended as to all the petitioners, it was carried out in form to deceive the New York Stock Exchange as to the number of its special partners, this deception would not of itself serve to fasten on the deceivers the liability of general partners. Respondents urge that in this statement of the contributors as set forth in the filed certificate there was such falsity as under the old Illinois act would result in all becoming general partners, notwithstanding the stated total was in fact contributed. Under the rigors of the old law this might have been so, but the contention of unlimited liability rests mainly on the nonapplicability of the old statute, through failure to complete the organization and begin business thereunder, and file the limited partnership certificate until after the repeal of the act requiring it, and the resultant nonapplicability of the old statute.

1010 It is apparent that none of the parties to the contract, or the certificate holders under the Hecht-Finn Trust contemplated or supposed that general partnership liability was assumed by any of them except Marcuse and Morris; and it was the evident understanding and belief of all that the others, whether called special partners, or certificate holders, would have no liability beyond their investment, and no participation in the conduct and control of the business, which was by the agreement committed wholly to Marcuse and Morris. Had the limited partnership been fully perfected while the act of 1874 was yet in force, these investors would probably have incurred no liability beyond their investment. At any rate this was their intention, regardless of whether under the circumstances under that law this would have been the result.

If under the old law the certificate or affidavit filed was materially false, the statutory result was to make all liable as general partners. Many other states had or have similar statutory provisions, and the courts have quite generally construed such provisions strictly against the limited partners. To such extent was this tendency recognized in the mercantile world that it was considered hazardous for one to invest money in a partnership enterprise upon the faith of compliance with limited partnership statutes, which were quite commonly regarded as a trap to catch the unwary rather than a proper means to a desirable end.

To relieve from such undue hazard, and make more safe to investors not participating in the business, the employment of their capital in partnership enterprises, as well as to bring about uniformity in such matters, the "Uniform Limited Partnership Act" was drafted, and submitted to the legislatures of the different states. Several of the states have adopted it. It passed the Illinois legislature as drafted, in June, 1917, and became a law without the governor's signature June 28, effective three days afterwards, July 1, repealing the act of 1874.

It indicates a policy with respect to this subject quite the reverse of that of its predecessor. While section 8 of the old act provided that the limited partnership shall not be deemed formed until the certificate as specified has been filed, and that any false statement in the certificate required to be signed by all the parties, or in the affidavit required to be signed by one of them, shall result in all the persons being general partners, the provisions of the 1011 Uniform Limited Partnership Act as to such matters are significantly otherwise. Section 2 provides that the limited partnership is formed when there has been substantial compliance in good faith with the requirements of the law, and as to false statements section 6 provides, not that thereby general partnership results as to all, but only as to those who executed the certificate knowing it to be false, and in favor of those only who suffer loss through reliance thereon. Provision is made for admitting other limited partners, and for the assignment of limited partnership interests, and for the limited partner to loan money to, and transact business with the partnership as an outsider might do, and for one to be at the same time a limited and a general partner. Section 24 provides for amendment of the certificate when there is a false or erroneous statement therein, or when the members desire to make in it any change that shall accurately represent the agreement between them. To insure construction as of remedial legislation, section 28 provides that the rule of strict construction of statutes in derogation of the common law shall not apply to the act. Section 11 provides that "a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with a person or in a partnership carrying on a business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

Although on July 2, 1917, when this supposed limited partnership deal was supposedly consummated through delivery of the executed agreements, filing of certificate, deposit of checks and beginning of the business, and from that time to the time of the bankruptcy all the parties were under the belief that they were a limited partnership duly organized under the law of Illinois, it appears that in this way were clearly mistaken, because the law under which they attempted so to qualify had been repealed before their organization was completed, certificate filed, and business begun, and they did not comply with the new act, either in the form of the certificate or in the filing of it for record in the recorder's office as required under the new law, the filing having been in the office of the county clerk as the old law prescribed; and also because the new law provides that limited partnerships 1012 shall not be organized for the carrying on of brokerage business,

As set forth in the statement of facts the record shows that after the filing of the intervening petition charging that all were general partners, Hecht and Finn undertook to avail themselves of the provisions of section 11 by unconditionally paying into court for the alleged bankrupt estate \$46,000 which represents the profits and income which, during the course of the business, had been paid on this \$190,000 of capital, with interest from time of payment, and it is the contention that this payment operates to relieve from general partnership liability the theretofore supposed special partners' trust.

It is earnestly contended that because the Uniform Limited Partnership Act prohibits the formation of a limited partnership to carry on the business of brokerage, section 11 cannot in any event afford relief. But section 11 is very broad in its terms. It is not limited to instances where there has been an attempted compliance with the provisions of the new act. It includes in its terms any person who at any time contributed to a partnership, erroneously believing himself to be a limited partner.

There are other sections which amply provide for the correction of errors and irregularities in organization and for amendment of statements in accordance with the facts, thereby perfecting and confirming the special partnership, without incurrance of general liability. This section is not designed to amend or correct or perfect the limited partnership organization, so that it may thereafter continue as such, but looks rather to the termination of the relation, and relief from general liability on compliance with the terms of the section in all those cases where persons erroneously believed they had become limited partners, without regard to whether or not the belief was induced by supposed compliance with this or any other act. This view not only comports with the words of the section, but with the evident general purpose of the act to give effect, so far as may be done, to the bona fide intent of parties, and to relieve from the extreme consequences of honest mistakes, which the prior law and its strict interpretation entailed. The erroneous belief may be as to the nature of the business which may be organized into a limited partnership as well as to any other matter of law or of fact, which induced the error. In this respect we do not conceive section 11 to be different in its effect as part of the new law than if it had been adopted as an amendment to the old.

1013 It is further contended that section 11 does not contemplate one may wait for two or three years, and until bankruptcy overtakes the concern before undertaking to have the benefit of the section. Such state of facts would go only to an issue upon the good faith of the asserted erroneous belief, and the prompt renunciation of interest in the profits and income of the business, after learning of the error. One can scarcely imagine circumstances under which one might have been more readily induced than those which this record presents. The new law had manifestly not then been published, and the three days which intervened between the time it became law and the time it became effective, hardly gave

opportunity for public discussion thereon. After the business started it does not appear that there was occasion for investigation as to its organization, nor that this was challenged, until about the time the concern got into difficulty. Even the New York Stock Exchange does not appear to have questioned its validity as a limited partnership. Consideration of the very exceptional circumstances shown, induce quite inevitably the conclusion that during all the time this business was carried on, it was in the honest though erroneous belief of all connected with it, that it was a limited partnership, and that within reasonable promptness after ascertainment of the true status, it was undertaken to comply with the conditions imposed by Section 11, albeit this was after petition in bankruptcy was filed.

In the statutory condition that "he promptly renounces his interest in the profits of the business or other compensation by way of income" there may be some ambiguity; but in this case the record shows the compliance was to the fullest extent that might be claimed on behalf of creditors, and it is not contended that the unconditional payment of the \$46,000 falls short of compliance with the section, if the section has application. The fact that elsewhere in the act amendment, correction and perfection of the organization are adequately provided for, assists to the conclusion that section 11 contemplated situations where a limited partnership could not under the law be formed at all or where, because of intervening conditions, it would not be practicable to perfect or continue it.

But it is urged that in no event can Vette, Zuncker, Regenstiner and the Studebakers have advantage of section 11, because of their denial that they ever became limited partners, and their consequent want of belief that they were such. The relief afforded by

1014 the section is to a person "erroneously believing that he has become a limited partner in a limited partnership." The insistence is, and the court evidently so found, that Hecht and Finn, although appearing as the only special partners, were in truth and in fact representing as well the other petitioners herein, whose relation to the partnership was found to be not different from that of Hecht and Finn. Their connection with the partnership being thus traced through their representation by Hecht and Finn it follows that if such representation would operate to charge them, they should in good conscience also have the benefit of whatever Hecht and Finn may have done which would bring relief from the charge. If therefore it appears that Hecht and Finn believed themselves to be special partners (and there can be no doubt that they did so believe), their representative capacity held to exist as to a part of the contributed capital would extend and inure to those whom they are thus held to have represented. The restitution having been made on the entire \$190,000 of supposed special partnership contributions, and having been of an amount sufficient for compliance with section 11 by all the petitioners, part of them should not be denied its benefit, because of their insistence that they were not members of any partnership at all, limited or general. Limited liability is the dominating feature of a limited partnership, and

petitioners, other than Hecht and Finn, resting as they did under the belief that they had effectually contracted for limited liability, it is our view that if section 11 applies at all, the fact that their real purpose was shown to have been the formation of a limited partnership, will not deprive them of the benefit of section 11, if the compliance with its terms included in fact all the petitioners, assuming, as we do, that the record fails to show credit was extended to the firm on the faith that petitioners were general partners.

Petitioners insist that, apart from other contentions, under the record here they are protected from a general partnership liability by the provisions of the Uniform Partnership Act adopted in Illinois passed at the same time and in the same manner as the Uniform Limited Partnership Act, and likewise effective July 1, 1917.

Let it be assumed that section 11 of the limited partnership act has no application whatever to partnerships carrying on brokerage business, and that persons erroneously believing themselves to be limited partners in such business cannot in any event be relieved from general liability by compliance with section 11. The 1015 rights and liabilities of such persons must then be tested by and under the law governing general partnerships, which in Illinois, from and after July 1, 1917, was the Uniform Partnership Statute.

This act, conceived and born with the Uniform Limited Partnership Act, indicates similar purpose of relieving from risk of incurring partnership liability where the general partnership relation was not by the parties intended. It prescribes that the rule of strict construction of statutes in derogation of common law shall have no application to the act, sec. 4 (1), and defines a partnership to be "an association of two or more persons to carry on as co-owners a business for profit." Sec. 6 (1). The contractual relation of petitioners does not fall within this definition. It cannot strictly be said that they became co-owners. The contributed \$190,000 which, unless lost in the venture, would eventually be returned to them. In this respect it differed from a loan of funds to the partnership, with division of profits in compensation for the loan, only to the extent that in the one case the creditors of the partnership may resort to the amount so contributed, free from participation of any claim of the contributor as a creditor, while the loaner would for his loan be upon parity with other creditors. Petitioners had no proprietary interest in, or title to, or dominion over the property of the partnership; neither had they under the contractual relation any right, power or duty in the carrying on of the partnership business. As to the conduct of the business they were strangers in quite the same sense that a loaner of funds would have been.

While receipt of profits has in some instances been held conclusively to presume partnership as to creditors, section 7 (4) makes this presumption *prima facie* only.

Section 9 (1) provides that every partner is the agent of the partnership for the purposes of the business. But under this contract none of petitioners had or could have had any right to do a single

act whereby the partnership would have been found. The contract either as first drawn or as afterwards entered into gave them no right or power to act for the partnership, and the record does not disclose any holding out or assumption of agency.

Section 7, under the subtitle "Tests in determining the existence of a partnership" prescribes that "In determining whether a partnership exists these rules shall apply: (1) Except as provided 1016 by section 16, persons who are not partners as to each other are not partners as to third persons."

Under the law as it was prior to the adoption of the Uniform Partnership Act the existence of general partnership as between alleged partners was a question wholly of their intention, to be gathered from their agreement. *Goacher v. Bates*, 280 Ill. 372; *National Surety Co. v. Townsend Brick etc. Co.*, 176 Ill. 156. In the last cited case it was said, "While the agreement with Adams Brothers to share one-half the profits and losses might raise a presumption of partnership, yet if the parties actually meant that there was to be no partnership created, and so contracted, the presumption would be rebutted." In *Grinton v. Strong, et al.*, 148 Ill. 587, the court said, "Even where parties enter into a joint enterprise and share in the profits, a partnership, as between themselves, is not necessarily the result. The intention of the parties always controls." So in *Smith v. Knight, et al.*, 71 Ill., 148, where Knight agreed to put money into a commission business and was to receive ten per cent per annum, and the share of the commissions, but was not to be liable for losses, the court, passing on the alleged partnership of Knight, said, "In determining this question the intention of the parties must be considered. Written articles of copartnership may be so expressive as to leave no room for doubt. So far as these articles of agreement are concerned we discover nothing in them evidencing an intention to form a partnership." And in *Ins. Co. v. Barringer*, 73 Ill. 230, the court said, "Whether a partnership exists or not depends upon the intention of the parties. Parties may be partners as to third persons when not so between themselves." In *London Assurance Co. v. Drennen*, 116 U. S. 461, it was said, "The mere participation in profits would give no such (partnership) interest contrary to the real intention of the parties. Persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist."

If we are correct in saying that, as between Marcuse and Morris on the one hand and the petitioners on the other, it was the distinct intent and purpose that there should be no general partnership, then as between themselves they did not become general partners. Undoubtedly contracts are conceivable wherein the parties may call themselves partners, where from the things actually agreed upon the partnership relation does not exist; and on the other hand, they may in terms declare they are not partners, when the very 1017 things they have agreed upon supply all the elements of partnership, and they would become partners despite their declaration to the contrary.

By the terms of this contract petitioners were to have no participation in the conduct of the business, could not in any manner contract for or bind the firm, and were not to be liable for losses beyond their several contributions to its capital. The existence of a partnership between themselves may be tested by the query whether in case of loss of the entire capital of the concern, and payment by Marcuse and Morris of its debts, they might have contribution from petitioners as in partnership. Undoubtedly under the contractual relation here shown they could not. We conclude that in any event, as between themselves, petitioners were not general partners with Marcuse and Morris.

If section 7 (1) means what it says, then this alleged general partnership does not respond to the prescribed statutory test that "persons who are not partners as to each other are not partners as to third persons." The section is all-inclusive, and has application to alleged partnerships of all kinds, whether for the carrying on of brokerage or any other business, and wholly regardless of whether the parties were or were not acting under the belief that they had created a limited partnership. The act manifests a definite purpose of making paramount the contractual intent of the parties to the agreement, as a test for fixing a general partnership liability rather than, as often theretofore, by way of penalization for participation in profits, or doing other things which held parties to general partnership liability, when general partnership was not contemplated or intended, and was not in fact effected as between themselves.

With the wisdom of such change in policy as is manifested by the Uniform Partnership acts we are not of necessity here concerned. There is reason for each view; but we are not at liberty to reject the test which the statute fixes. If experience shows the statutory test to be impractical and unwise, the remedy is with the legislature alone. The record discloses no such situation as would suggest that the application here of that test involves hardship or inequity toward the creditors generally. It shows nothing to indicate that creditors were beguiled into extending credit to the firm on the faith that the petitioners (particularly the others than Hecht and Finn) were general partners, nor that petitioners held themselves out as such partners, or did any other of those things which, under section 1018 16 of the act, might entail upon them general partnership liability.

We conclude that petitioners, not having assumed general partnership relation with Marcuse and Morris, did not as to others become partners with them.

We find no reported decisions construing the statutory provisions above considered. A salutary principle of construction of statutes designed to be uniformly adopted by the states, is found in *Commercial Bank v. Canal Bank*, 239 U. S. 520, where the Uniform Warehouse Receipts Act was under consideration, and the court said it "should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it."

While these proceedings will in no wise interfere with any creditor of the alleged bankrupt undertaking to establish elsewhere or otherwise liability to him or any or all of petitioners by virtue of section 16 of the Uniform Partnership Act, we find that, resolving in favor of respondent all disputed questions of fact, the law as applied to the record here does not warrant the inclusion of petitioners in the order of reference on the question of solvency of Marcuse & Co. This conclusion makes it unnecessary to consider the proposition that the Studebaker interest in the concern belonged wholly to Studebaker Brothers Trust, and not to the Studebakers as individuals, and that therefore they can in no event be held liable as partners.

The order here under review is revised by eliminating therefrom the names of all the petitioners herein, leaving the revised order to include Marcuse and Morris only as the general partners in the alleged bankrupt firm of Marcuse & Company. Petitioners are adjudged their costs.

EVANS, C. J., dissenting: In view of the large sums involved, I feel justified in setting forth somewhat fully my reasons for this dissent.

The district judge, after hearing the evidence, found that petitioners were general partners of the firm of Marcuse & Co., against whom a petition in bankruptcy had been filed. The order of reference thereupon made to determine the solvency of the partnership as enlarged, petitioners now seek to review and revise. Only questions of law are therefore presented. In *re Hoyne, Bankrupt*, — Fed., —. On this record we can consider but one question: Is there any evidence to support the conclusion of the district judge?

1019 The district judge failed to make specific findings of fact, but we must assume that such findings as were essential or might be necessary to support his conclusions were by him found in favor of respondents. His conclusion that petitioners were general partners makes such a position unavoidable.

Respondents urge that there was oral evidence tending to show that the written agreement of the parties was but a cover to the real understanding; that, in order to prevent the enforcement of the liability arising out of a general partnership, the parties executed a written agreement which on its face purported to be a limited partnership. Finding that such a partnership could not transact business on the New York Stock Exchange, a new agreement was executed for the purpose of deceiving the New York Stock Exchange and with the further object of preventing any detection of the real status of the parties in case an enforcement of the partnership liability was later attempted by any creditor of the firm.

If there is any evidence in the record to support the position of the respondents, we must accept it as established. In *re Hoyne, Bankrupt*, *supra*. Nor are respondents limited upon this inquiry to direct evidence. Their position may find support in the inferences fairly deducible from the established facts.

Respondents, however, do not rely solely upon this contention, but assert in addition, that should we conclude, in executing the

agreement under consideration, the parties intended the formation of a limited partnership only, nevertheless petitioners occupy the status of general partners in the partnership because limited partnerships to conduct a brokerage business were not authorized in the State of Illinois. My reasons for dissenting will be confined to this contention only.

Briefly it may be said that the parties to this agreement on July 2, 1917, and continuously thereafter to a date subsequent to these bankruptcy proceedings associated themselves together for the conduct of a brokerage business wherein each party contributed toward the common capital and wherein the profits were divided according to the contribution.

The statutes of the parties to the contract, then, must necessarily have been that of (a) limited partners, (b) general partners, or, (c) creditors.

By a process of elimination we can readily exclude any finding that petitioners were creditors.

1020 All of the evidence points to the denial of the relationship of debtor and creditor. It is not urged in this court except inferentially. The parties never intended to create such a relationship. The definite period during which the agreement was to remain in force, viz., five years, tends to disprove such a status. In the agreement we find the parties provide, "The said parties above named have agreed to become co-partners in business and by these presents agree to be partners to one another under the name and style of Marcuse & Co." Also, "The net profits of said business shall be divided among the partners thereto in manner as follows. * * * All the balance of said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm."

The so-called trust agreement executed by Hecht and Finn recognizes the relation of the petitioners to Marcuse and Morris as being that of partners by saying, "Whereas, under the terms and provisions of said Articles of Agreement, reference to which is hereby made, the undersigned, said Frank A. Hecht and said Joseph M. Finn, by reason of their relation to said firm as special partners, are, and will from time to time become entitled to certain payments and distributions of the copartnership assets and the income, interest and profits of and upon said assets."

In the partnership agreement the so-called special partners were authorized to name auditors of the business of said copartnership who were authorized to examine the books and might certify in writing that the business was not being conducted in a "safe, conservative and judicious manner," or that the general partners were "not properly managing the business," in which case a dissolution of the partnership was authorized at the option of the special partners. The control of the business by the so-called special partners is indicative of a partnership, and the provision for the dissolution of the firm confirms the conclusion that petitioners were not simply creditors.

The case is quite unlike the case of *In re Hoyne*, Bankrupt, re-

cently decided by this court, where the parties designated themselves and treated themselves as debtors and creditors. The oral testimony of certain witnesses likewise recognized all of the parties as partners and nothing else. A finding that petitioners were not creditors, which the court necessarily made when it found them partners, must then not only be accepted on this petition to review and
1021 revise, but, it may be added, was the only finding that could be fairly reached from this record.

Not being creditors, the parties were either members of a limited partnership or members of a general partnership.

The law of Illinois, where the contract was executed and where the business of the partnership was to be conducted, must define petitioners' status. The Uniform Partnership Act covers both limited and general partnerships and was in force at the time this contract went into effect. It is idle to discuss the history of the passage of this Act. Whether it received the governor's signature or became effective by operation of law, whether it had long been in effect, or not, are questions apart and disassociated from the question of construction. The Uniform Partnership Act represents the law of partnership and so far as applicable must govern the contract of the parties. In passing it might be observed that but for the existence of the Uniform Partnership Act the contention that petitioners were general partners because of the authority of the special partners and the provision for control of the business through the auditors might be quite as potent as the argument respondents now urge.

The parties' rights and their liabilities are fixed by the terms of the Uniform Partnership Act, however, and our inquiry must be directed to the effect of the Act upon the agreement, and this in turn becomes a question of statutory construction.

Unquestionably it was the intention of the legislature to enlarge the usefulness of the limited partnership as an instrument in the conduct of business. To accomplish this intention, then, courts should give the Act a liberal construction.

It is equally certain that, because of the danger of great loss through its use in certain fields of industry, the legislature denied its use to those who wished to engage in the banking, insurance, railroad or brokerage business. This manifest intent, clearly expressed in section 3, must likewise find expression in the construction of the statute.

There is no authority to conduct business under the Uniform Limited Partnership Act except for the legitimate purposes therein described. Section 3 reads: "A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, brokerage and the operation of railroads."

1022 It is not necessary to inquire into the reasons for excepting these four businesses, but if ground for the exception in Sec. 3 be required, neither imagination nor speculation need be awakened to suggest the motive and the purpose back of the legislation. The facts in the present case furnish a most persuasive argument in

favor of the wisdom of the legislation that denied to those who would engage in the banking, the insurance, the railroad or the brokerage business the right to do so through a limited partnership.

Notwithstanding the express language of the exception in this section, the construction and the effect of which are not open to question, a conclusion has been reached that sanctions and gives legality to a course of dealing the authority for which is expressly denied.

But petitioners seek to avoid the effect of section 3 by referring to section 11 of the Act which reads, "A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

Passing for the moment the two issues raised by respondents in reference to this section, denial of any renunciation by certain of the petitioners and failure of all of them to renounce during the life of the partnership, and taking up at once the construction and effect of this section 11, it is apparent that we are confronted with a question of statutory construction, concerning which the rules applicable are well recognized. For example, the entire Act must be read and effect given to each section, if possible. If full effect cannot be given to the language of each section, then the overlapping sections must be read together and reconciled.

The Limited Partnership Act is readily analyzed. By its first section the term, limited partnership, is defined. Section 2 provides the steps which must be taken by any two or more persons desirous of forming a limited partnership. Section 3 defines the businesses which may be carried on by limited partnerships. The other sections deal with the rights and liabilities and powers of partners who organize under this Act.

1023 In other words, section 11 was written with section 3 as its background. The words, "limited partnership" obviously meant a partnership organized under this Act, a partnership for the purpose of conducting a business authorized under this Act. "Limited partnership" referred to lawful associations not to those organized in defiance of the statute. The relief authorized by section 11 was limited to those cases where bona fide attempts to organize limited partnerships under the provisions of the Act had been made.

The force of this conclusion is strengthened by sections 30 and 31 of the Act. In the former section the legislature used the heading "Existing Limited Partnerships," while in section 31 a further reference is made to "existing limited partnerships." "Limited partnerships" as distinguished from "existing limited partnerships" must refer to those organized under this Act. We can hardly attribute to the legislature an attempt to give the same term different meanings in the same act.

Again speaking of the partnership the legislature in section 11 referred to "the partnership carrying on the business," etc. What business could the legislature have referred to other than a lawful business, a business for the conduct of which a partnership could be lawfully organized.

In this same section 11 we find a reference to "the rights of a limited partner." Section 10, the preceding section, is entitled "Rights of a Limited Partner." Can it be that the legislature was at one moment referring to limited partnerships organized under and by virtue of this Act and to the rights and liabilities of limited partners as defined by this Act, and was in the same sentence including limited partnerships organized in defiance of the Act?

Moreover, there could be no erroneous belief that the Uniform Limited Partnership Act had been complied with, for the parties were not only ignorant of the existence of the law, but in their agreement they expressly stated that they were endeavoring to organize under the law of 1874, which was expressly repealed by the later enactment.

Reference to the General Partnership Act cannot in my opinion help the petitioners. It is true that section 7 of the Partnership Act provides that "Persons who are not partners as to each other are not partners as to third persons," but section 6 of the same act also provides "This act shall apply to limited partnerships, except in so far as the statutes relating to such partnerships are inconsistent herewith." Section 3 of the Limited Partnership Act necessarily destroys the test applied by section 7 of the General Partnership Act in so far as it deals with those engaged in the brokerage business. A general partnership is defined by the Act as "an association of two or more persons to carry on as co-owners a business for profit." Since two or more persons cannot conduct the brokerage business through a limited partnership, it follows that when such persons engage in the brokerage business as co-owners for profits they are necessarily general partners.

But, could I agree that section 11 applied to limited partnerships organized under these circumstances and for a purpose forbidden by the Act, I would still find myself unable to agree that as to all petitioners there was a renunciation such as is required by section 6 to relieve them of the liability of general partners.

To renounce means, "to reject deliberately, to disown, to disavow, to disclaim." Ordinarily it involves personal action knowingly done, or, to quote from Black's Law Dictionary, "it implies an affirmative act of disclaimer or disavowal."

In the present case Hecht and Finn, after adjudication in bankruptcy and with enormous liability as general partners facing themselves and others, attempted to repay to the partnership the profits previously drawn by the petitioners. As to the petitioners other than Hecht and Finn such repayment could not be a renunciation unless such parties either ratified or authorized such repayment. The record shows that the petitioners other than Hecht and Finn not only failed to ratify or authorize such repayment, but when

requested to do so and prior to such tender refused to authorize Hecht and Finn to make any such payment for them or to be bound by the trustees' action in case such repayment was made.

The evidence on this issue is clear and unequivocal, but if it were doubtful or uncertain, we would, on this petition to review and revise, be required to assume that petitioners other than Hecht and Finn did not renounce their interest in the profits promptly after discovering they were not limited partners.

It is not necessary in this dissenting opinion to consider the status of Clement Studebaker, Jr., and George M. Studebaker. Their position is somewhat different from that of the other petitioners. Whether that difference would be sufficient to relieve them from the liability of general partners, I need not discuss. Since this is a minority opinion and since the majority of the court are 1025 of the opinion that none of the petitioners were general partners, it is not necessary to consider or discuss the evidence which furnishes the basis for the contention that these two petitioners were not general partners with Marcuse and Morris.

And afterwards, on the same day, to wit: On the twelfth day of January, 1922, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Thursday, January 12, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Francis E. Baker, Circuit Judge, presiding; Hon. Samuel Alschuler, Circuit Judge. Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk; Robert R. Levy, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge. Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

[Title omitted.]

Judgment.

This cause came on to be heard on the petition to review and revise the order entered on July 1, 1920, in the District Court 1026 of the United States for the Northern District of Illinois, Eastern Division, In the Matter of Marcuse & Co., Bankrupt, which said order is in the following words and figures, to wit:

"Cause referred to Referee Wean for hearing on assets and liabilities up to March 11, 1920, and directing finding of facts and conclusions of law, as to solvency up to March 11, 1920, of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank H. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zunker, composing the firm of Marcuse & Co."

and the answers to said petition to review and revise, and was argued by counsel.

On consideration whereof, It is now here ordered that the order entered in the District Court on July 1, 1920, referring the cause to Referee Wean for hearing on assets and liabilities up to March 11, 1920, and directing finding of facts and conclusions of law as to solvency up to March 11, 1920, of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank H. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, composing the firm of Marcuse & Co., be, and the same is hereby revised by eliminating therefrom the names of Joseph M. Finn, Frank H. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, leaving the revised order to include Marcuse & Morris only as the general partners in the alleged bankrupt firm of Marcuse & Company. It is further ordered that the petitioners be adjudged their costs.

And afterwards, to wit: On the ninth day of February, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Petition for a Rehearing, which said Petition for a Rehearing is not copied here nor made a part of this record.

And afterwards, to wit: On the third day of March, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Answer to the Petition for a Rehearing, which said Answer is not copied here nor made a part of this record.

And afterwards, to wit: On the fourth day of April, 1922, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Tuesday, April 4, 1922.

Court met pursuant to adjournment.

Present: Hon. Francis E. Baker, Circuit Judge, presiding; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

[Title omitted.]

Order Denying Petition for Rehearing.

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

1029

Certificate of Clerk.

United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 959 to 1027, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and stipulations relating thereto, the Petition for a Rehearing and the Answer thereto) in the Matter of Marcuse & Company, et al., Alleged Bankrupts, Henry Vette, et al. vs. C. B. Giles, et al., No. 2855, October Term, 1919, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-eighth day of April, A. D. 1922. Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. [Seal of the United States Circuit Court of Appeals, Seventh Circuit.]

1030

Writ of Certiorari and Return.

[Filed Nov. 2, 1922.]

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit entitled in the matter of Marcuse & Co., Alleged Bankrupts, Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Clement Studebaker, Jr., and George M. Studebaker, petitioners, and C. B. Giles, John Janca, I. Fiegel, Fred Mayer, E. H. Allen, et al., respondents, No. 2855, October Term, 1921, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to review and revise order of the District Court of the United States for the Northern

District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed
1031 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two. Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 2855.

In re MARCUSE & Co., Alleged Bankrupts.

HENRY VETTE et al.

vs.

C. B. GILES et al.

Petition to Review and Revise.

It is hereby stipulated that the record already on file in the Supreme Court of the United States on petition for certiorari in the above entitled cause may be taken as a return to the writ of certiorari issued by said Supreme Court in said matter. Carl Meyer and Henry Russell Platt, Counsel for Finn. Harry P. Weber, George W. Miller, Counsel for Vette, Zuncker and Regensteiner. Horace Kent Tenney, Harry A. Parkin, Counsel for Executors of Frank A. Hecht. William Burry, G. M. Peters, Julius Moses, H. H. Kennedy, Hamilton Moses, S. S. Stein, Walter Bachrach, Lewis F. Jacobson, Counsel for Respondents Giles et al. George T. Buckingham, Donald Defrees, Stephen E. Hurley, Counsel for Clement Studebaker, Jr., and George M. Studebaker.

Endorsed: Filed Oct. 31, 1922. Edward M. Holloway, Clerk.

1032 UNITED STATES OF AMERICA,
Seventh Circuit, ss:

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case entitled

In the Matter of Marcuse & Company, Alleged Bankrupts—Henry Vette, et al., petitioners, vs. C. B. Giles, et al., respondents, is a full, true and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 31st day of October, A. D. 1922. Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. [Seal of the United States Circuit Court of Appeals, Seventh Circuit.]

[File endorsement omitted.]

1033 [File endorsement omitted.]

(8764)

JUN 23 1922

WM. R. STANSBURY

CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921

No. ~~44859~~

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, JOHN JACCS, I. FIEGEL, FRED MAYER, E. H.
ALLEN AND GEORGE B. GIFFORD,

Petitioners,

vs.

HENRY VETTE, PETER M. ZUNCKER, THEODORE REGEN-
STEINER, CLEMENT STUDEBAKER, JR., GEORGE M. STUDE-
BAKER, FRANK A. HECHT, JR., AND CLARA K. HECHT,
EXECUTORS OF THE WILL OF FRANK A. HECHT, AND JOSEPH M.
FINN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT. *pp. 1-2*

BRIEF IN SUPPORT THEREOF. *pp. 25-54*

COPY OF OPINIONS OF COURT OF APPEALS. *Appendix 1*

WILLIAM BURRY,
JULIUS MOSES,
GUY M. PETERS,
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Attorneys for Petitioners.

WILLIAM BURRY,
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CONTENTS.

	PAGE
Petition	1
Original partnership agreement	6
Revised partnership agreement	9
Hecht-Finn agreement	10
Illinois Uniform Limited Partnership Act	13 margin
Sections 6 and 7, Illinois Uniform Partnership Act	15 margin
Brief	25
I. No limited partnership formed	26
II. Section 11 of Limited Partnership Act of 1917 not applicable	32
III. Respondents are general partners	41
Opinion of Circuit Court of Appeals	1 Appendix
Dissenting opinion, Judge Evans	22 Appendix

INDEX TO AUTHORITIES.

A. & E. Enc. of Law, Vol. 19, p. 339	49
Buckley v. Bramhall, 24 How. Prac. 456	31
Cummings v. Hayes, 100 Ill. App. 347	30
Cyc., Vol. 30, p. 360	47
Fougner v. First National Bank, 141 Ill. 124	46
Goacher v. Bates, 280 Ill. 372	43
Grinton v. Strong, 148 Ill. 587	43

Insurance Co. v. Barringer, 73 Ill. 230.....	43
London Assurance Co. v. Drennen, 116 U. S. 461...	43
Manhattan Brass Co. v. Allin, 35 Ill. App. 336.....	48
Meehan v. Valentine, 145 U. S. 611.....	42, 47
National Surety Co. v. Townsend Brick Co., 176 Ill. 156	43
Ruling Case Law, Vol. 20, p. 833.....	47
Smith v. Knight, 71 Ill. 148.....	43
State Bank v. Butler, 149 Ill. 575.....	42
Walker v. Wood, 69 Ill. App. 542 (Aff. 170 Ill. 463).	48
Weidhorn v. Levy, 253 U. S. 268.....	4

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1921.

No.

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, JOHN JANCES, I. FIEGEL, FRED MAYER, E. H.
ALLEN AND GEORGE B. GIFFORD,

Petitioners,

vs.

HENRY VETTE, PETER M. ZUNCKER, THEODORE REGEN-
STEINER, CLEMENT STUDEBAKER, JR., GEORGE M. STUDE-
BAKER, FRANK A. HECHT, JR., AND CLARA K. HECHT,
EXECUTORS OF THE WILL OF FRANK A. HECHT, AND JOSEPH M.
FINN,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.**

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The petition of C. B. Giles, John Jances, I. Fiegel,
Fred Mayer, E. H. Allen, and George B. Gifford, peti-
tioning and intervening creditors of the firm of Marcuse

& Company, respectfully shows to this Honorable Court as follows:

In 1917 the firm of Marcuse & Co., of Chicago, was organized to conduct a general stock brokerage business. In 1919 the firm failed and a petition in involuntary bankruptcy was filed against it.

The amended petition alleged that Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette and Peter M. Zuncker, were all general partners in the firm of Marcuse & Co. and sought an adjudication in bankruptcy against them.

A dispute early arose as to who composed the firm of Marcuse & Co. On the part of the creditors it was insisted that the firm was composed of Ben Marcuse, Lew H. Morris, Vette, Zuncker, Regensteiner, Clement Studebaker, Jr., George M. Studebaker, Hecht and Finn as general partners. On the part of Finn, Hecht and the other respondents hereto it was insisted that Marcuse and Morris were general partners and the other respondents were limited or special partners only, and were not liable for the debts of the bankrupt firm beyond the money they had paid into the firm.

By stipulation the liability of the respondents as general partners was first heard by the District Court with the agreement that if all respondents were held liable as general partners, the matter should then be referred to a referee for a hearing on the issue of insolvency. (Rec., 17, 747.)

On a very full hearing and with a large mass of evidence, documentary and oral, before it, the District Court decided that they were all general partners; that the so-called special partnership, by reason of its failure to comply with essential provisions of the Illinois stat-

utes, was a general partnership, and that the Studebakers, Zuncker, Vette and Regensteiner had selected Hecht and Finn as their representatives in the operation of the special partnership. It then entered an order directing a reference to a referee to hear evidence and report as to the solvency of the firm, treating all the respondents as partners.

Vette and the other respondents, except Hecht and Finn, filed a petition in the Circuit Court of Appeals to review and revise the order so entered, on the ground that they were special or limited partners and not liable generally for the debts of the firm. Hecht and Finn were made respondents to that petition and joined in the hearing in the Court of Appeals, taking the position that none of the respondents was liable as a general partner, and further that in signing the partnership agreements hereafter referred to, they were acting as representatives of the other respondents, and that if they were general partners the other respondents were also general partners.

On the hearing of that petition the Court of Appeals was divided, two of the judges (Alschuler and Page) being of the opinion that the respondents were not liable as general partners, and uniting to reverse the decision of the district judge; while the third member of the court (Evans) wrote a dissenting opinion, concurring with the district judge and holding that all the respondents were general partners.

Up to the present time therefore two judges have held that respondents were general partners and two have held otherwise. The two writing the ruling opinion have held substantially that respondents were not general partners or that they have been relieved from liability as such because of certain provisions of the new Uniform

Limited Partnership Act, which was adopted in Illinois July 1, 1917.

Petitioners filed in the Court of Appeals a petition for rehearing. That petition was denied April 4, 1922 (1027). This petition is presented to obtain a review of the judgment of the Court of Appeals. Petition for *certiorari* is the proper method in such a case. (*Weidhorn v. Levy*, 253 U. S. 268.)

For convenience of the court we have attached to our petition and brief copies of the two opinions of the Court of Appeals. This accounts for the length apparent of this document. Our references will be to the printed record in this case except as otherwise indicated.

Prior to 1917 there was in Chicago a stock brokerage firm named Von Frantzius & Co. In March, 1917, that firm was in bankruptcy. Von Frantzius had died and his estate was then in the Probate Court. Bankruptcy proceedings had been brought about by his death and the consequent discovery of his firm's insolvency. Marcuse had been a partner in Von Frantzius & Co. and Morris an employee. All the other respondents hereto had been customers of the firm of Von Frantzius & Co. and most of them were creditors in large amounts. Vette and Zuncker had come out about even.

They all determined, at the solicitation of Marcuse, to form a new partnership to succeed to the Von Frantzius brokerage business and seek to recover what they had lost through that firm.

It was arranged that the new firm should be a limited partnership under the Illinois act of 1874 with Marcuse and Morris as general partners and all the respondents hereto as special or limited partners. It was also agreed that 25 per cent of the earnings of the new firm should be devoted to making good to respondents their losses through the Von Frantzius firm.

There had been negotiations for the formation of the new partnership before February 2, 1917, and under that date the provisions concerning the recovery by these special partners (except Vette and Zuncker) of their losses were elaborated. The written plan included the issuing by Marcuse of certificates to each of the partners certifying the amount of the indebtedness of the Von Frantzius firm to the holder, provided that Marcuse should acquire the Von Frantzius estate at judicial sale, form such a partnership as was afterwards formed, and from the proceeds of the Von Frantzius estate and 25 per cent of the earnings of the new firm should pay the special partners what was owing them from the Von Frantzius firm. The form of these trust certificates issued by Marcuse appears at page 669 as petitioner's exhibit 26 and is dated February 2, 1917.

What was done in forming the partnership, the purpose of the parties, the object of the partnership, and nearly all other matters required for consideration and determination of this case are largely shown in three documents that appear in the record. These three documents are:

1. A partnership agreement dated April 2, 1917, and signed about that time, for a limited partnership to carry on a brokerage business, the firm to be composed of Marcuse and Morris as general partners and *all* the respondents hereto as special partners.

2. An agreement for a like limited partnership dated April 2, 1917, but signed June 30, 1917, with Marcuse and Morris as general partners and Hecht and Finn as special or limited partners. This agreement, although dated April 2nd, is usually referred to as the partnership agreement of June 30, 1917, as it was signed on that date.

3. An agreement dated June 30, 1917, and on that date signed by Hecht and Finn and approved by Marcuse and Morris, providing that Hecht and Finn, as special partners under the partnership articles signed June 30th, should represent all the respondents including themselves, and that the special capital should be contributed by all the respondents as originally determined. This document is generally referred to as the Hecht-Finn trust agreement.

These three documents are printed many times in the record, but for the purpose of this petition we will refer to the first document as it appears on page 413, to the second as it appears on page 26, and to the third as it appears on page 33 of the printed record.

Around and upon these three documents hangs all the other evidence in the record, showing the circumstances under which those documents were signed, the reasons leading to certain changes therein, the differences between, and the contemporaneous construction put upon the documents by the parties for the two years during which the partnership continued. In a proceeding of this nature all facts on which there is any evidence must be resolved in favor of supporting the District Court's decision.

ORIGINAL PARTNERSHIP AGREEMENT.

The gist of the first partnership agreement is given in the statement of facts by the Court of Appeals as follows:

"The record discloses that under date of April 2, 1917, all the alleged partners except the Studebakers (one Hoffman signing in his own name, but in fact as representing the Studebaker interest), executed an agreement which provided for carrying on at Chicago a brokerage business of buying and

selling on commission stocks, bonds, grains, etc., for a period of five years from such date, under firm name of Marcuse & Co.; that such firm be a limited partnership under the statute of Illinois, Marcuse and Morris the general partners, and the others special partners; the contributions of the latter to be, Hecht \$25,000, Hoffman \$50,000, Vette \$30,000, Zuncker \$25,000, Finn \$31,500 and Regensteiner \$28,500, total \$190,000; that the business be conducted and managed by Marcuse and Morris, they to receive named salaries, and that on the contributions of Marcuse, Morris and of the special partners should be paid interest at 6 per cent per annum; that thereafter 25 per cent of the net profits be paid to Marcuse to be applied by him on certain certificates which he would issue representing debts due from Von Frantzius & Co. (then in bankruptcy), all of such limited partners, except Vette and Zuncker, being large creditors of the Von Frantzius concern; and that after such certificates are paid, the said 25 per cent should be paid to all the parties to the agreement except Morris; that 10 per cent of the net profits of the business was payable to Morris, *and the balance of profits was to be divided periodically between the parties in proportion to their contributions to the whole capital*; that the special partners be limited in their liability to the amounts respectively contributed to the capital, and that they should have no liability for debts of the partnership beyond such contributions; that Marcuse and Morris should be in charge of and carry on the business, and that the special partners shall have right to examine the books and have them audited, and in certain contingencies to have the business liquidated. After execution of the agreements they were left with one of the lawyers pending carrying out of certain conditions, mainly the dismissal of the Von Frantzius bankruptcy proceedings, with which concern Marcuse had been in some way connected.

One of the contributions of Marcuse toward the firm's capital was a seat on the New York Stock Exchange estimated to be then worth \$68,000."

Shortly thereafter a serious obstacle arose. A membership on the New York Stock Exchange was absolutely necessary to the carrying on of the business, but when Marcuse went to New York to have his firm admitted to the exchange, he discovered that the rules of that exchange provide, first, that in any brokerage firm with a membership on that exchange there could only be two special partners, and, second, that no person engaged in any other business could be a partner in such a firm. The firm had not commenced to do business, as the assets of the old Von Frantzius firm had not been acquired, and probably would not be until about July 1st.

No thought of abandoning the plan for a partnership occurred to any of the parties who had signed the first agreement. They determined to circumvent or avoid the rules of the New York Stock Exchange. It was found that Hecht and Finn had retired from business and were therefore qualified as members of a brokerage firm. The other special partners were engaged in other businesses. It was determined that the partnership should proceed just as originally planned, with, however, Hecht and Finn appearing as special partners *representing* all the respondents. No other change whatsoever was to be made in the arrangements.

The Studebakers' counsel testified that the intention was to withdraw them entirely from the partnership, but this testimony is not consistent with that of Marcuse, Finn, Regensteiner, Hoffman and Zuncker. (Rec., 552-57, 617-21, 399, 400, 641-51, 696.) The District Court found the change of program was to avoid the New York Exchange rules. (Rec., 933.)

It is conceded in both the controlling and dissenting opinion of the Court of Appeals that upon such petition to review and revise only questions of law can be

considered, and that every fact necessary to support the District Court's order which is supported by any evidence must be assumed as existing. Counsel on both sides of the case concurred in this proposition.

REVISED PARTNERSHIP AGREEMENT.

This brings us to the second vital document in this case. It is the revised partnership agreement (Rec., 26), still dated April 2nd but actually signed June 30th, under which the partnership was finally formed and under which it continued for about two years, when it failed and was put into bankruptcy. As if to preserve the continuity of the transaction and to show that it is but a paraphrase of the former partnership agreement, it bears the same date, April 2, 1917.

Of this second document the Court of Appeals in its statement of facts said:

"The stated objects of the partnership, the name and the details respecting rights, duties and immunities of the parties, and the character and amount of capital contributions were in all essential features the same as under the first contract, except that Hecht and Finn, the special partners, each agreed to contribute \$95,000, and the term was five years from July 1, 1917."

The agreement was signed by Marcuse, Morris, Hecht and Finn. The total amount of capital contributed by all the respondents under the first agreement was \$190,000. The amount of capital contributed by Hecht and Finn under the new agreement was \$190,000. The contribution under the second agreement was actually by all seven of the respondents, each contributing the same amount that he agreed to contribute under the first agreement. The provisions for a limited liability are the same. The provision that 25 per cent of the net profits should go to Marcuse to pay the creditors of

Von Frantzius is the same. The provision for Morris and that all other net profits shall be divided among all the others is exactly the same. The provisions concerning the keeping of books, access thereto, general statements, trial balances, *sharing in losses*, the amount of special capital, the appointment of auditors and the authority of the seven respondents to wind up the business, are all the same as in the former agreement.

Necessarily there were some differences or the second contract would still be obnoxious to the New York Exchange. Necessarily this second document omitted on its face some rights of respondents other than Hecht and Finn. Although the latter two actually contributed only about one-third of the special capital, they could, under the second agreement, draw the dividends due all the special partners. The respondents other than Hecht and Finn although contributing two-thirds of the special funds, were without power to appoint an auditor, without power to order a dissolution.

Thereupon the third principal document was drawn on the same day and is sometimes referred to in the record as the Hecht-Finn trust. It appears at page 33 of the record.

THE HECHT AND FINN AGREEMENT.

This instrument was executed June 30th, at the same time as the second partnership agreement and as part thereof, and has attached to it as an exhibit a copy of the partnership agreement of June 30th. It is sometimes called the Hecht and Finn trust, though in reality no trust at all.

This third agreement recites that Hecht and Finn are entitled, as special partners under the second partnership articles, to 6 per cent on the special capital con-

tributed by them and also to their share of the profits; that the other five respondents are entitled to a like distribution of interest and profits on the capital they furnished; calls Hecht and Finn trustees, and provides that the entire distributions and dividends payable to all the respondents, including Hecht and Finn, shall be paid by the firm to the Chicago Title & Trust Company, which shall thereupon distribute such receipts in accordance with the interests of the seven respondents in the partnership. It restores to the respondents (other than Hecht and Finn) their access to the books of account showing, among other things, all losses sustained, liabilities incurred and all payments by and receipts of general partners.

It further provides that auditors shall be appointed, not by Hecht and Finn, but by a majority of the holdings of the seven special partners. It restores to the control of the majority of them the right to dissolve the firm if the auditors' report is unfavorable, provides that Hecht and Finn shall act as directed by the wishes of a majority of the respondents, and if they do not do so, the holders of the majority of them can apply for a dissolution of the partnership, and in the event of the death of both trustees the majority of the remainder of the special partners shall appoint a new trustee.

THE ATTEMPT TO FORM A LIMITED PARTNERSHIP FAILED.

All proceedings for the formation of the limited partnership in question were taken under the Illinois partnership law of 1874, which permitted the formation of a limited partnership to carry on a brokerage business if certain required steps were taken, particularly the making and acknowledging of a statement by all the partners showing the names of all special partners or persons interested in the firm, the amount of contribution by each special partner and that all such contributions were actually paid in, and the filing of such certificate in the office of the county clerk of the county in which was the principal place of business of the proposed firm.

Section 8 of the Limited Partnership Act of 1874 provides:

"SECTION 8. No such partnership shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed as above directed; and if any false statement shall be made in such certificate or affidavit, *all* the persons interested in such partnership shall be liable for all the engagements thereof, *as general partners.*"

In 1917 Illinois adopted the Uniform Partnership Act and the Uniform Limited Partnership Act, changing materially the partnership law of Illinois. The new acts took effect on July 1, 1917, the old act expiring with June 30th.

The certificate referred to above, required by the Act of 1874, was not recorded until July 2nd when the act under which it was recorded had been repealed. No attempt was ever made to comply with the new limited partnership act and it was conceded by counsel for respondents, and it is stated in the ruling opinion of the Court of Appeals that this partnership was not com-

pletely formed as a limited partnership under the act either of 1874 or 1917.

For convenience we print as a footnote, the sections of the new Illinois Uniform Limited Partnership Act, particularly involved in this case, and also Sections 6 and 7 of the new Uniform General Partnership Act.

As there is no serious contention in the record that a limited partnership was formed either under the Act of 1874 or under the Uniform Limited Partnership Act of Illinois, and as no attempt was made to conform in any way to the new act and because it expressly provides that no brokerage business can be carried on under

SECTIONS FROM THE ILLINOIS UNIFORM LIMITED PARTNERSHIP ACT.

"Section 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* A limited partnership is a partnership formed by two or more persons under the provisions of Section 2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership."

"Section 2. (1) Two or more persons desiring to form a limited partnership shall

- (a) Sign and swear to a certificate, which shall state
 - I. The name of the partnership,
 - II. The character of the business,
 - III. The location of the principal place of business,
 - IV. The name and place of residence of each member; general and limited partners being respectively designated,
 - V. The term for which the partnership is to exist,
 - VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
 - VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,
 - VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,
 - IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,
 - X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
 - XI. The right, if given, of the partners to admit additional limited partners,
 - XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to con-

it, the defense is largely a confession and avoidance based on two theories:

First, that respondents are freed from partnership liability by Section 11 of the new limited act, which provides that where partners thereunder "erroneously be-

tributions or as to compensation by way of income, and the nature of such priority.

XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File for record the certificate in the office of the recorder of deeds of the county where the principal office of such limited partnership is located.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph 1."

"Section 3. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, brokerage and the operation of railroads."

"Section 11. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

"Section 28. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued under this Act takes effect."

"Section 30. (1) A limited partnership formed under any statute of this State prior to the adoption of this Act, may become a limited partnership under this Act by complying with the provisions of Section 2; *provided* the certificate sets forth:

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this State prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the pro-

lieve" that they are members of a limited partnership, and upon learning they are not limited partners, promptly renounce their interest in the profits of the business, they shall not be held liable as general partners; and,

Second, that as respondents did not become limited

visions of an Act entitled, 'An Act to revise the law in relation to limited partnerships,' approved March 18, 1874, in force July 1, 1874, except that such partnerships shall not be renewed unless so provided in the original agreement."

"Section 31. Except as affecting existing limited partnerships to the extent set forth in Section 30, the Act entitled, 'An act to revise the law in relation to limited partnerships,' approved March 18, 1874, in force July 1, 1874, is hereby repealed."

SECTIONS 6 AND 7 OF THE ILLINOIS UNIFORM GENERAL PARTNERSHIP ACT.

"Section 6. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this act, unless such association would have been a partnership in this State prior to the adoption of this Act; but this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith."

"Section 7. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Section 16, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise;

(b) As wages of an employee or rent to a landlord;

(c) As an annuity to a widow or representative of a deceased partner;

(d) As interest on a loan, though the amount of payment vary with the profits of the business;

(e) As the consideration for the sale of the good will of a business or other property by installments or otherwise."

partners under the old act and did not become limited partners under the new limited act, and did not intend to be general partners, therefore they were not partners at all and cannot be held liable as such.

EFFECT OF SECTION 11 OF NEW LIMITED ACT.

In connection with the first defense the evidence showed that the partnership continued active nearly two years, then became insolvent and was thrown into bankruptcy; that shortly thereafter Hecht and Finn tendered or paid to the receiver \$46,000, claiming that to be all the profits or dividends that had been distributed to all seven of respondents and claimed the protection of Section 11. It was also shown (Rec., 896-99) that the other five respondents declined to participate in the tender, disclaimed any necessity of returning profits and refused to allow Hecht and Finn to tender the return of the profits or to make a renunciation of interest in their name or on their behalf. They claimed they were not special partners. This is also stated in both opinions of the court.

The creditors insisted that the limited partnership was sought to be created under the old law; that nothing was ever done under the new law; that a limited partnership for brokerage could not act under the new law; that Section 11 of the new act did not apply to a partnership formed under the old act and especially not to a brokerage business, as that act excluded that business, and that in any event Section 30 of the Uniform Limited Partnership Act expressly provided that until any limited partnership under the former act complied with provisions of the new act, it should be governed entirely by the provisions of the old act. The creditors also insisted that "erroneously believe" could not apply

to a mistake in law and especially total disregard or continued ignorance for over two years of such well known statutes as the Uniform Partnership Acts, and that in any event the respondents other than Hecht and Finn had not tendered or made restitution of profits received, had not renounced their interest in the partnership and could not take advantage of Section 11. The district judge and one of the circuit judges decided with the creditors, but the other two circuit judges, writing the controlling opinion, held the position taken by respondents sound and that no recovery against them could be had.

EFFECT OF SECTIONS 6 AND 7 OF NEW GENERAL PARTNERSHIP ACT.

On the second point respondents urged that they were not partners at all, not having formed a limited partnership under either the old or the new act and not having intended to be general partners. They relied upon the provision of the new act that it must be liberally construed to avoid liability, insisted they did not come within the definition of "an association of two or more persons to carry on a business for profit," and laid particular stress upon the clause in Section 7 of the new Uniform General Partnership Act that persons who are not partners as to each other are not partners as to third persons. They insisted that intention to be partners was an absolute prerequisite of their being partners, and that if they did not intend to be partners, they were not partners to each other and therefore could not be partners as to the general public, whatever their acts may have been.

The creditors insisted that there was a partnership, that a partnership business had been carried on, that

they had dealt with a partnership and they showed its members and its business. They insisted that all that was ever done to form this partnership was done on or before June 30th, and therefore it was a partnership under the old general partnership law, and that even if that was not so, it was a full-fledged general partnership under the new law. They relied upon the recitals in both partnership agreements that the paper was designed to create a partnership and because they desired to become partners with each other, and also upon the adoption of that theory in the third document, the so-called Hecht-Finn trust.

The judges divided in the same way on this question and the controlling opinion was therefore that no partnership had ever been formed and that none of the respondents were liable as partners.

THE IMPORTANCE OF A NATIONAL CONSTRUCTION OF THE UNIFORM PARTNERSHIP ACTS.

The American Bar Association has a standing committee on uniform legislation. That committee for many years has been engaged in an attempt to procure the passage of uniform statutes on subjects of general commercial importance and has procured in Illinois and elsewhere the passage of many uniform acts.

In line with its general campaign on this subject it procured in various states the passage of statutes providing for a "Commission for Uniformity of Legislation in the United States." Pursuant thereto Illinois in 1907 passed an act creating a "Commission on Uniform State Laws." Commissioners were appointed under that act to represent Illinois. These commissioners met from time to time with similar commissioners representing all states of the union composing the "National Conference of Commissioners on Uniform State Laws."

At the 1916 meeting there was reported to the National Conference by a "Sub-committee on Commercial Law" the text of the "Uniform Limited Partnership Act." This act was approved by the national commissioners, submitted to the various states, passed by the Illinois legislature in 1917, becoming effective July 1st of that year.

The various uniform acts drafted under the guidance of the National Conference of Commissioners have from time to time been adopted by various states of the union, some of them, such as the Uniform Negotiable Instruments Act, having been adopted by practically every state. Others have been adopted by a lesser number.

The work of the National Commission on uniform laws is of the utmost importance in the present development of jurisprudence in the United States. The declared purpose of the American Bar Association when it was founded in 1878 was stated as follows:

"Its object shall be to advance the science of jurisprudence, promote the administration of justice and *uniformity of legislation and of judicial decisions throughout the nation.*"

Frank J. Stimson, in the American Academy of Political and Social Science of 1895, speaking of the work of the National Conference of Commissioners on Uniform State Laws, said that the movement, if successful to any degree, "would be the most important juristic work undertaken in the United States since the adoption of the federal constitution."

These statutes, if they are to serve the purpose for which they are drafted, must be adopted by the various states practically verbatim as recommended by the Commission. They must be interpreted rationally and uniformly and by reason of their general application, they have become practically federal statutes. It is as im-

portant that such acts be construed with uniformity as that they should be passed in the first instance.

Any construction of the uniform statutes that would thwart the purpose of the drafters, any forced construction to meet a particular case, especially by a divided court, would only bring about divergence in construction and will do great harm and mean that the uniform laws will not be uniform in the different jurisdictions.

The holdings of the court in this case are:

1. That section 11 of the Uniform Limited Partnership Act applies to partnerships formed under the prior act, as well as under the new act, and in fact, to partnerships that cannot be formed under the new act.

2. That section 7 of the Uniform *General* Partnership Act can be applied to firms attempted to be formed as *limited* partnerships, but failing completely in that attempt, and then be so construed as to relieve the members from all liability, as either general or special partners.

3. That a brokerage house in Chicago formed as a partnership can do business for two or three years, invite deposits, squander funds, not make the investments for which the funds were remitted, fail for a large amount, and still, under the two acts, be held to be no partnership at all, and that some at least of the partners go scot-free.

We insist that these holdings are a palpable misconstruction of the uniform partnership statutes, that they are far-reaching in their effect, are contrary to the policy of Illinois as shown in cases cited in our accompanying brief, and will defeat the uniformity for the sake of which these acts were passed.

Where a question is decided by a divided court, as the present one was, where it is the first decision upon the interlocking of these different statutes, where it is the

first decision to hold that under such circumstances certain of the parties who were reaping the benefits were not partners at all, there ought to be a more authoritative construction of the statute.

The Uniform Partnership Acts are among the most recent of the uniform acts approved by the Commission and recommended for passage. Up to the present time they have been adopted by about fourteen states. The construction placed on these acts by the majority opinion brings about such remarkable results that if that construction is to stand, the Uniform Law Commissioners will undoubtedly wish to change the text of the acts before passage by other states. At once we have divergence, not uniformity.

We submit also in favor of this petition for *certiorari* that the decision of the Court of Appeals is plainly and manifestly wrong, so much so, that we are entitled to have it reviewed.

The amount involved in this case should also be taken into account and the very large number of creditors, many of whom doubtless sent in their earnings to have them invested in bonds and now have nothing in return for such deposits. The business was akin to banking. The capital put into the business was \$190,000 from the special partners, \$10,000 from Morris, \$60,000 from Marcuse, a New York Stock Exchange membership worth \$68,000 and a Chicago Stock Exchange membership worth \$2,000, or a total of \$330,000. In three months, on September 30, 1917, it reached a business involving \$4,272,830.04, including a loss for the three months of \$324,655.34. (Rec., 713.) The firm's capital was then gone and it was conducting business on its depositors' moneys, and the firm so continued in business for about two years, until failure.

While no report of the receiver in bankruptcy appears

to show whether there will probably be a dividend, yet it appears from page 971 of the record that the books show about 700 creditors and page 973 shows that liabilities exceed assets by \$1,729,640.73. This indicates a continuous loss at about the rate of the first three months. Assets usually shrink and liabilities increase, and there is probably a deficit considerably in excess of \$2,000,000. From pages 965 to 970, it appears from their own statements that Vette, Zuncker, Regensteiner and the Studebakers are worth much in excess of \$3,000,000, and the resources of Hecht and Finn are not shown.

Is it any wonder that the Illinois Uniform Limited Partnership Act refuses to permit a brokerage business to be carried on by a limited partnership and that the Illinois corporation act refuses to permit a corporation to be formed to carry on such a business, and thus requires unlimited personal liability on the part of those engaging in such business?

The reasons we have for applying for this writ of *certiorari* are:

a. The public interest in having an authoritative ruling on these most important uniform acts—a ruling that will inspire confidence and preserve the uniformity aimed at.

b. The fact that these questions—so important to the public as well as to the litigants here involved—are decided practically by two judges on each side of the questions.

c. The palpable error involved in the construction given by the Court of Appeals to the uniform statutes involved.

d. The large amount involved and the great hardship that the present ruling imposes on over 700 creditors.

For these reasons we respectfully ask that a writ of *certiorari* be granted to bring up for review the questions involved.

And your petitioners will ever pray.

C. B. GILES,
JOHN JANCS,
I. FIEGEL,
FRED MAYER,
E. H. ALLEN,
GEORGE B. GIFFORD,
HAROLD LACHMAN,
By WILLIAM BURRY,
JULIUS MOSES,
GUY M. PETERS,
LEWIS F. JACOBSON,
JACOB RINGER,

Their Attorneys.

WILLIAM BURRY,
JULIUS MOSES,
GUY M. PETERS,
Counsel for Petitioners.

STATE OF ILLINOIS, }
 COUNTY OF COOK. } ss.

E. H. Allen, being first duly sworn, says, that he has read the foregoing petition and that the same is true to the best of his knowledge, information and belief. This application is made in good faith, not for the purpose of delay.

E. H. ALLEN.

Subscribed and sworn to before me this 12 day of June, 1922.

(NOTARIAL SEAL)

NATHAN M. BYKOFF,
Notary Public.

CERTIFICATE.

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of this court.

WILLIAM BERRY.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

The opinion of the Court of Appeals and the dissenting opinion present fully the issues in this case, and they are printed as an appendix to this brief. There are, however, some points involved not fully considered in the opinions, and some additional authorities to which we wish to call attention.

It is the position of petitioning creditors that:

1. No special or limited partnership was formed, because:

(a) The Act of 1874, under which it was attempted to form the limited partnership and the only act under which a limited partnership to conduct a brokerage business could be formed, was repealed prior to the filing of the necessary certificate.

(b) There were intentional false statements of material matters made in the certificate which was filed.

2. The respondents were not relieved from liability as general partners by Section 11 of the Limited Partnership Act, as that section does not apply to limited partnerships formed under the Act of 1874 until they qualify under the new act, and especially does not apply to limited partnerships formed for a purpose expressly prohibited by the Uniform Limited Partnership Act. Moreover, respondents did not comply with the proviso of Section 11.

3. On the failure to form a limited partnership the respondents all became general partners both at common law and under the Uniform Partnership Act.

4. The respondents who for two years owned and operated this brokerage business in Chicago, a business that was insolvent within three months after its doors were opened and finally ended in the bankruptcy court, should not be allowed to go free but should be held liable for its debts.

I.

NO SPECIAL OR LIMITED PARTNERSHIP WAS FORMED.

(a) The Act of 1874 was repealed prior to the filing of the necessary certificate.

The District Court found, and both opinions of the Court of Appeals proceed on the assumption that the effort to form a limited partnership failed. No other result could have been reached. An attempt was made to form the limited partnership under the Act of 1874. The statutory certificate which was signed and filed, recited (Rec., 361):

"This is to certify that the undersigned, Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, being desirous of forming a limited partnership *under provisions* of an Act of the General Assembly of State of Illinois entitled, 'An Act to Revise the Law in Relation to Limited Partnerships,' approved March 18, 1874, in force July 1, 1874, do hereby certify," etc.

This certificate was filed July 2, 1917, and only purported to give the limited data required by the Act of 1874, not the much fuller disclosure required by the the Act of 1917. The certificate was filed in the office of the county clerk as required by the Act of 1874, not recorded in the office of the county recorder as required by the Act of 1917.

On June 30, 1917, the Act of 1874 was repealed, except as to limited partnerships then in existence. This lim-

ited partnership had not been completed prior to that repeal.

Section 8 of the Act of 1874 is as follows :

“Section 8. No such partnership shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed, as above directed; and if any false statement shall be made in such certificate or affidavit, *all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.*”

This certificate, acknowledgment and affidavit was not filed until July 2nd. The final and vital element, therefore, in forming a limited partnership under the Act of 1874 did not take place until that act had been repealed.

(b) Had the certificate been filed in time under the Act of 1874, respondents would still have been liable as general partners because of the false statements in the certificate and the failure of some of the limited partners to sign that certificate.

The Act of 1874 provides (Sec. 4) :

“The persons desirous of forming such partnership shall make and *severally* sign a certificate which shall contain 1, * * * ; 2 * * * ; 3. *the names of the general and special partners* therein, distinguishing which are general and which are special partners, and their respective places of residence; 4. The amount of capital stock which *each special partner* shall have contributed to the common stock.”

The essential feature of this certificate, designed for the information and protection of creditors, is that *the names* of the special partners shall be disclosed, the amount of the *contribution of each special partner be disclosed* and that this certificate shall be signed and acknowledged *by each* of the special partners. To avoid

the rule of the New York Stock Exchange, but with the effect of concealing this essential information from creditors, the certificate filed did not disclose the contributions to the partnership fund made by Vette, Zuncker, Regensteiner and the Studebakers or their connection with the organization. It was not signed by them.

As pointed out in our petition, these men were all partners and every right secured to all the special partners under the first partnership agreement was preserved to them under the second and third agreements. They made the same contributions to the capital, were entitled to the same proportion of the profits, bore the same proportion of losses, and had the same right to inspect the books, appoint auditors and dissolve the partnership as was given them in the first document.

While, in the third document, Hecht and Finn are called trustees, they were not trustees in any sense. There was no *corpus* to the trust, and no property, not even the dividends, passed through their hands. They had no control over the business that could not equally be exercised by their associate certificate holders. That trust document would never have been written had it not been that the other respondents had no trust or faith in Hecht and Finn.

The effect of the so-called Hecht-Finn trust was to deliberately put all the respondents, including Hecht and Finn, upon exactly the same basis with reference to the partnership. If any one of them is a general partner, all of them are. The so-called Hecht-Finn trust, simply emphasizes the fact that the firm which finally engaged in business was the firm arranged for in February, sought to be formed in April and that was finally formed in June.

The contemporaneous construction put upon the docu-

ments by the parties shows that they considered the substituted documents but a carrying-out of the first partnership contract. Marcuse testified that it was a continuation of the same scheme, some of the respondents testified that it was not, and the District Court found that the articles of June 30th were the result or continuance of the articles of April 2nd. In this proceeding to review and revise no disputed question of fact can be inquired into.

No money was paid by any respondent to Hecht and Finn. On Saturday morning, June 30th, the contributors in person or by their counsel met in the office of Marcuse & Co. and handed in checks for the amount of their respective contributions. (Rec., 505, *et seq.*) They each laid their checks on the table. The checks of Hecht and Finn were for their contributions as provided by the first partnership agreement. The checks of the other contributors were for the amount of their contributions according to the first agreement. The latter checks were drawn to the order of Hecht and Finn but were at once endorsed by them and laid with the other checks on the table.

Zuncker concedes (Rec., 557) that he paid \$25,000 into the Hecht-Finn trust and supposed it went to Marcuse & Company. Marcuse testified that he talked with the two Studebakers and that they told him that they would put \$50,000 into the enterprise and referred him to Mr. Scott Brown or Mr. Hoffman for details. On the 30th of June Hoffman was present with the \$50,000 check. Mr. Robertson was present as the representative of Vette and Zuncker and said that he would not have delivered their \$55,000 into the fund unless all of the \$190,000 went in at the same time. (Rec., 857.)

The money passed directly from respondents to the partnership account.

Therefore, on June 30th, each of the respondents, present in person or by attorney at the meeting when the certificate was made, knew that that certificate was purposely made false in two most important particulars—the names of the special partners and the amounts contributed by them; and it was not “*severally*” signed by each of the special partners.

On December 1, 1918, Marcuse & Co. declared an extra or special dividend of 4 per cent. Checks for this dividend were mailed by Marcuse & Co. direct to all the special partners or credited to their trading accounts and so accepted by them, with the exception of the Studebakers, who returned their checks, requesting that they be made payable to the Chicago Title & Trust Co., which was done. (Rec., 728.)

The District Court found and the Court of Appeals opinions proceed on the assumption that the purpose of making the change in the form of the original partnership agreement was to avoid the rule of the New York Stock Exchange. Section 8 of the 1874 Act provides:

“and if any false statement shall be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.”

This is an Illinois statute and the Illinois courts have construed it that failure to give correct information required by the act renders all parties liable *as general partners*.

In *Cummings v. Hayes*, 100 Ill. App. 347, the court held all the members of an attempted limited partnership liable as general partners because one of them had signed the statutory certificate by an attorney, and said (p. 354):

“What portions of the statutes are designed for the protection of those who may deal with the firm?

Manifestly, the statements of capital contributed by the special partners, the duration of the partnership, *the names of the parties, and certainty as their assent thereto.*"

"The certificate filed in the office of the clerk of the county, to be by him recorded in a book and kept subject to inspection by all persons, *must be such that therefrom, and without outside inquiry or examination, it can be determined with certainty whom the parties forming which limited partnership are, and that each of them has joined therein and assented thereto.*"

Buckley v. Bramhall, 24 How. Prac. 456, is a well-considered case directly in point. Bramhall had contributed \$80,000 special capital, but the certificate did not disclose his interest. The court said (p. 459):

"He sought to secure the right and all the benefit of a special partner without becoming one, and thereby *made himself a general partner*. He is made so by the operation of the statute, which declares that all persons interested in the partnership shall be liable as general partners if any false statement is made in the certificate or affidavit by which the limited copartnership is formed."

Respondents, therefore, by their own deliberate act, rendered themselves liable as general partners.

Nothing more was ever done by the firm by way of issuing certificates, verifying them, or filing them anywhere. No attempt was made to qualify under either the limited or general uniform partnership act taking effect July 1, 1917. Therefore this partnership, whatever it was, stands on the Act of 1874 and was a general partnership under that act.

If the above situation was in any way affected by the new legislation, it could only make the firm a general partnership under the new act, for a brokerage firm could not be formed or perfected under the new limited partnership act. Indeed one of the claims made for respond-

ents was that they did not know anything about the new law. In Judge Alschuler's opinion it is stated that no attempt was made to qualify under the new law, and the court excuses the respondents from doing so, where it says that the new law had just been passed and had not been published and there was not opportunity for public discussion thereon, and that after the firm was once organized there was no occasion for investigation of the law or for ascertaining anything about the law during the two years that the firm remained in operation with the new acts in force. But we know that the passage of the uniform acts was a matter of much discussion for several years before they were passed.

There is little dispute up to the present point between us and the ruling opinion of the Court of Appeals, for as before said, that opinion simply sustains a defense of confession and avoidance.

II.

SECTION 11 OF THE LIMITED PARTNERSHIP ACT OF 1917 HAS NO APPLICATION.

The principal part of the controlling opinion of the Court of Appeals is based on Section 11 of the Uniform Limited Partnership Act. That section is above set out in full in our footnote (pp. 13, 14 and 15). This contention involves a most important construction of the Uniform Limited Partnership Act.

In construing statutes the intention of the enacting body is sought. In the uniform acts approved and recommended by the Commission on Uniform Laws, we should perhaps go back of the enacting body and seek the intention of that Commission.

Section 11 is new. It does not occur in any prior limited partnership act. Was it the intention that this section should apply to limited partnerships then in existence, formed under prior statutes? Was it intended to apply to limited partnerships formed under prior acts to construct a business expressly prohibited by the new limited act?

Acts submitted by the Commission on Uniform Laws are drafted with unusual care by expert draftsmen, submitted to the scrutiny of the commissioners and published widely for suggestions and criticism before submission to the various legislatures.

To avoid possible ambiguities, terms in each of these acts which might be susceptible of more than one interpretation are defined. As submitted by the Commission on Uniform Laws, the heading of the first section of the Uniform Limited Partnership Act is: "Limited Partnership Defined." (See Terry, *Uniform State Laws*, Anno., p. 536.) That section then continues:

"A limited partnership is a partnership formed by two or more persons under the provisions of Section 2."

Section 2 referred to is section 2 of that act. When "limited partnership" is subsequently used it is used without qualification in the sense defined by the act.

In the light of this definition, we turn to Section 11. The first part of it is:

"A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not," etc.

What is meant here by "limited partnership"? Obviously a limited partnership *as previously defined*, that is, a limited partnership formed under Section 2 of that

act. To hold otherwise is to ignore the definition of "limited partnerships," in the act itself.

As if to prevent any possible misconception, the new act further expressly covers the situation. Section 30 of it is entitled:

"Provisions for *existing limited partnership*."

Paragraph 2 of Section 30 is:

"A limited partnership formed under any statute of this state prior to the adoption of this act until or unless it becomes a limited partnership under this act, *shall continue to be governed by the provisions of an act entitled 'An Act to Revise the Law in Relation to Limited Partnerships,' approved March 18, 1874.*"

In other words, the new act has certain burdens that the old act did not have, for instance, much fuller disclosures. It has certain benefits the old act did not give, for instance, Section 11. Until any limited partnership formed under the old act assumes the burdens of the new act, *it continues to be governed by the provisions of the old act*. Could anything be clearer?

The construction placed upon Section 11 by the Court of Appeals wholly disregards or annuls Section 30, and holds Section 11 to be no different in effect "than if it had been adopted as an amendment to the old" (act) (Ct. App. Op.), and that partnerships formed under the old act, *not* bringing themselves under or assuming the burdens of the new act, can nevertheless have all the benefits of the new act. This construction is squarely opposed to the intention of the commissioners submitting and the legislatures enacting the Uniform Limited Act. If it stands it bids fair to work confusion. Instead of a carefully drafted substitute act, the Uniform Act will be but an amendment to prior acts, and the rights and liabilities of partners in limited partnerships formed

under prior acts must be determined by construing the former acts as if amended by the Uniform Act.

It is also clear that the legislature did not intend, by Section 11, to grant immunity to persons forming a limited partnership under the Act of 1874 *for a purpose for which a limited partnership could not have been formed* under the Act of 1917. Section 3 of that act is:

“A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, *brokerage* and the operation of railroads.”

By expressly denying the right to organize as limited partners for brokerage purposes, the legislature impliedly required parties engaging in such a business to do so as general partners with unlimited liability.

Yet the controlling opinion of the Court of Appeals applies Section 11 to a partnership *attempted* to be formed under the Act of 1874 to conduct a brokerage business, and gives to respondents, who for nearly two years from July 2, 1917, carried on a brokerage business in Chicago, finally ending in bankruptcy, all the immunities of limited partners.

In the court below it was contended that the new act introduced into the law a new conception of limited partnerships; that limited partnerships formed under this act must be treated in a new manner, and that we now have a new creature of the law—limited partnerships—to which a new public policy is to apply. It probably was for that very reason that Illinois expressly excluded from such more liberal policy any partnership formed to conduct a brokerage business.

To apply Section 11 to limited partnerships organized under the 1874 act, is to force into the new act a meaning the legislature expressly denied to it. It is extending the provisions of a lenient act to a business which

could not be carried on under that act. It is evading the very purpose of the legislature in excluding brokerage houses from that act.

There is reason in the determination of Illinois refusing to allow a brokerage business to be carried on under the Uniform *Limited* Partnership Act. Every argument that the new limited partnership act created a new era in partnerships but emphasizes the purpose and intention of the legislature that brokerage firms must not operate under that act, and the stronger such arguments are, the more certain it becomes that that act cannot be availed of to carry on a brokerage business.

Banking, insurance and brokerage have always been considered by the legislature of Illinois (and by legislatures generally) as differing from other business. There is good ground for such treatment. The trust the public necessarily places in banking, insurance and brokerage houses, the vast amounts of other peoples' money they handle, the duties they owe to protect and conserve that money, all that we know about such business, justifies the law-making authority in refusing to allow such business to be carried on by a partnership with limited liability; and also justifies the Illinois Legislature in refusing to allow banking or insurance business to be carried on by a corporation organized under the general incorporation act, in requiring double stockholders' liability in banking, and in refusing to allow a brokerage house to be incorporated at all.

Therefore no person is now allowed to engage in brokerage business as a limited partner or as a stockholder. He must do so under the general partnership act, and place at the risk of that business his entire fortune.

The large number of failures of brokerage houses during this year suggests the wisdom of this policy.

If a partnership had been formed after July 1st for the purpose of banking and an attempt had been made so to form it under this new limited partnership act, would anyone for an instant have thought that the firm so carrying on the banking business was a limited partnership and not a general partnership? Would ignorance of the new law have supported a defense founded on "erroneous belief"? The very highest financial responsibility is requisite for protection of people doing business with banking, brokerage and insurance institutions.

The controlling opinion holds that if, in spite of the prohibition of the statute, a limited partnership is formed to conduct a brokerage business, the partners may avoid liability under Section 11 of the limited partnership act. That opinion holds substantially that ignorance of the law, ignorance that the old statute has been repealed, ignorance that the uniform partnership acts have been adopted in Illinois, ignorance or disregard of the provisions and requirements of either the old or the new law, all may be excused under Section 11 and the words "erroneously believing," and that such excuse may even cover the making of a false certificate as to who are the special partners and the several amounts they contributed. Violation of the law results in immunity and manifest advantage to the violator. To accomplish this, the ruling opinion lifted Section 11 out of the Uniform Limited Partnership Act, applied it to an organization which could not have been formed under that act and allowed it to be used as a cloak under which respondents may escape liability. Whether Section 11 can be so interpreted and so applied is fundamental and essential in the interpretation and continued existence of the Uniform Limited Partnership Act.

Throughout the opinion the court seems to have been misled by the idea that it is not affirmatively shown that

any person was prejudiced or injured by any concealment in this case, or that any person relied upon the liability of the concealed partners. Would this be a good answer to the small depositor of a savings bank which the promoters had attempted to organize under the limited partnership act? Certainly this reason does not apply to Hecht and Finn, for their certificate was on file, although informally, in the office of the county clerk. It was as much notice in that way as if the limited partnership had been properly formed.

Moreover, this point is not good on any principle of law. A claim that a person is not entitled to recover from *all* partners because he did not know the name of one partner or that that person was a partner, is no defense in the case of a general partner. There are many firms with only two persons appearing in the firm name that have eight or ten partners, and the public knows little about those not named, but they are all liable. The contention that no one who did not rely on the name of one of these partners can recover would do away with all the law ever written on the liability of an undisclosed principal and would bring it about that a man whose name did not appear in the firm and who claimed that he was only a special partner could not be held liable. Such a doctrine would probably do away with the liability of one-half of the partners in our present commercial system.

The conclusions arrived at by the Court of Appeals cut down the liability of partners and the remedies of creditors to an extent never before dreamed of, and to an extent that we do not think will be followed by the courts of the states in which the Uniform Partnership Acts have become laws. There is almost a license given for persons to associate themselves together in the banking or brokerage or insurance business in Illinois as a

limited partnership, to make all they can out of it, and then having received the deposits and trust of many people, simply to say, when bankruptcy comes, that they "erroneously believed" they were acting in compliance with the law and now that their attention has been called to their flagrant disregard of the statutes, they will return the profits they have made and go scot-free.

Had this firm been successful, had large profits been realized, respondents would have, in proportion to their contributions, profited thereby. They had power to close the business. For the manner in which the business was conducted and for its present condition, they, not the public and not the creditors, are responsible. Theirs should be the loss. There is no hardship, there is no inequity in holding those who owned the business and who would have realized the profits had the business been successful, liable for its debts.

Respondents have not brought themselves within the terms of Section 11 or complied with its proviso, and cannot claim the benefit of it.

Even, however, were Section 11 applicable to any attempt to form a limited partnership under the Act of 1874, it would not avail respondents. That section exonerates a person who has contributed to the capital of a business "erroneously believing" he has become a limited partner in a limited partnership, etc. Good faith is essential to invoke Section 11. The last clause provides for renouncing profits as soon as a "mistake" is discovered. It was not intended to protect those who intentionally concealed material facts required by the statute to be disclosed, and renounced after discovery and exposure of such deceit. It was not intended to protect those who make a consciously false statutory certificate.

Respondents could not in good faith have "erroneously

believed" that they had become limited partners in a limited partnership. They found it necessary to circumvent a rule of the New York Stock Exchange. In order to do so, they were willing to and did violate the one most essential, most vital provision of all limited partnership acts, including both the old and the new Illinois acts—full disclosure of the names and contributions of the limited or special partners.

Respondents did not renounce all interest in the firm or return all profits, and cannot therefore claim the benefit of Section 11.

Even taking it that Section 11 of the new limited partnership act could be applied to limited partnerships formed under the Act of 1874 and which have not filed under the provisions of the 1917 act, respondents (other than Hecht and Finn) cannot claim the benefit of Section 11. Hecht and Finn tendered to the receiver in bankruptcy \$46,000, claiming that amount to be the aggregate of all received both by themselves and the other respondents from the firm. Hecht and Finn furnished the whole amount tendered. (Rec., 891.) The other respondents refused to allow or permit the tender to be made in their names. (Rec., 896-7.) They have to-day, each of them, in his pocket, every dollar he received from Marcuse & Co. by way of profits or otherwise.

They have not "renounced" their interest in the partnership. **They persistently declared they were not special partners and never had considered themselves as such under the second agreement.** They maintain that position still in their pleadings, and therefore they could not on their own theory have "erroneously believed" that they were limited partners. They expressly declined to authorize Hecht and Finn to make a renunciation for them or in their name and have personally made no such

renunciation. Without refunding profits received and without renouncing future interest in the profits, they claim the advantage of Section 11.

This opinion stands as the final expression of the federal courts on this far-reaching and anomalous effect given Section 11, and if ratified by a refusal of this court to review it, must stand as the recognized law of those courts. We believe, however, that the opinion of the Court of Appeals so misconstrues the Illinois Uniform Limited Partnership Act that the final courts of Illinois cannot and will not follow it, and we will have diversity instead of uniformity in our uniform partnership acts. We believe that the interpretation placed on the act by the Court of Appeals is squarely opposed to the intention and purpose of the act, and that in some most important particulars it nullifies the uniform act. In the interest of harmonious and rational work of the Commission on Uniform Laws, this decision should be reviewed by the court. This is especially true, as the four federal judges who passed on this question in this case were evenly divided in opinion.

III.

RESPONDENTS ARE GENERAL PARTNERS AT COMMON LAW, AND IF NOT, THEN UNDER THE UNIFORM GENERAL PARTNERSHIP ACT OF 1917. THE COURT ERRED IN HOLDING THAT NO PARTNERSHIP RELATION OF ANY KIND EXISTED.

The last part of the opinion of the Court of Appeals discusses what would result if Section 11 is not applicable and does not exonerate respondents. The majority opinion holds that even if Section 11 is not applicable the respondents are not liable as partners.

Section 6 (1) of the Uniform General Partnership Act.

Section 6 (1) of the Uniform Partnership Act (quoted by the court in the majority opinion) defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." This is but an adaptation of the common law definition of partnership as given in the best considered cases (*Meehan v. Valentine*, 145 U. S. 611; *State Bank v. Butler*, 149 Ill. 575).

The majority opinion held that respondents do not come within this definition of a partnership, and said, "The contractual relation of petitioners does not fall within this definition." And referring to the respondents other than Hecht and Finn, the court said that they "*do not by the finally executed contract purport to have entered into any partnership arrangement of any sort.*"

What then was their relation? They were associated together. They were engaged in the business for profit. They were carrying it on as co-owners. They each contributed capital. They shared in the profits in proportion to the capital they contributed. They were to bear losses in the same proportion. On dissolution of the partnership the assets were to be distributed among them. What element is lacking to constitute a partnership within the definition of the Uniform Act?

In further reasoning to the conclusion that no relation of partnership existed in this case, the court referred to the first part of Section 7 of the Uniform General Partnership Act, which is:

"In determining whether a partnership exists these rules shall apply:

(1) Except as provided by Section 16, persons who are not partners as to each other are not partners as to third persons."

(Section 16 relates to partnership by representations, and has no application.)

The Court of Appeals then, in connection with the provision of the act just quoted, declared that *intention* to form a partnership was a fundamental requisite to a partnership, that if such intention was lacking the co-operating parties could not be held as partners as between themselves, and that, as the law just quoted provides that "persons who are not partners as to each other are not partners as to third persons," therefore persons could not be partners as to third persons unless they *intended* to be partners to each other.

Following this line of reasoning the court then divided partnerships into general and limited, and further held that if parties intended to be limited partners, but were not so through violating some statute, they could not be held as general partners. Although they had intended to be partners of one kind, they could not be held to be partners of another kind.

Upon this fallacious reasoning the court held that as respondents intended to become limited partners but failed to become so under either the old or the new law, and as the *intention* to become one kind of a partner did not include becoming another kind of a partner, and as they did not intend to become general partners, therefore, *they were not partners at all*. It would be hard to conceive a more illogical deduction.

In support of this reasoning the court, conscious that it was construing an Illinois law, cited five Illinois cases and one opinion of this court (*Goacher v. Bates*, 280 Ill. 372; *Smith v. Knight*, 71 Ill. 148; *Grinton v. Strong*, 148 Ill. 587; *National Surety Co. v. Townsend Brick Co.* 176 Ill. 156; *Insurance Co. v. Barringer*, 73 Ill. 230; and *London Assurance Co. v. Drennen*, 116 U. S. 461.)

In the *Goacher* case a live stock trader obtained money from a bank, his account being guaranteed by the cashier

thereof, who was to receive for his guaranty part of the profits but not stand any losses. An accounting was asked on the basis of a partnership. The court held that there was no partnership.

In the *Smith* case money advanced to a partnership was to be repaid with interest and as extra compensation for the loan part of the profits of the business was to be paid, but the lender was not to be responsible for losses. The court held that no partnership was intended.

In the *Grinton* case Grinton was to take complete charge of certain property, superintend expenditures on account of it, collect rents, etc., and was to receive 3% of amounts collected for rents and a certain amount of the profits if the property was sold. Brinton asked for an accounting, claiming he was a partner. The court held he was not a partner.

In the *National Surety* case, the surety company resisted liability on a surety bond on the ground that the contractor had taken a subcontracting firm practically into partnership with him and thereby voided the bond. The court held there was no partnership and the surety company was defeated.

The *Barringer* case was also a loan of money to a partnership together with some guaranty of credit, but the lender of the money was never interested in any profits or losses. An insurance company defended on the ground that the lender of the money had become a partner whereby a new partnership had been formed which the insurance policy would not protect. Held no partnership and the insurance company was defeated.

In the *London Assurance Company* case the insurance company interposed a defense that by the admission of

a new partner the firm had been changed so as to avoid the policy of insurance sued on. The insurance company was defeated. The syllabus of the case being:

"An agreement by A with B that on the payment of a sum of money B shall participate in the profits of A's business, gives B no interest, as between themselves, in A's stock in trade, when it appears that it was their intention that he should have no such interest."

In all of these cases the courts, as was to be expected, dwelt particularly on whether there was an intention to form a partnership and in each of them found there was no such intention. The courts repeatedly said that *as between the parties* there was no partnership. They also repeatedly laid down the doctrine that partnership did not depend upon the language used but upon what was done. The parties might declare themselves to be partners and yet not be partners; might declare themselves not to be partners and yet be partners, and that they might not be partners as between themselves and yet be partners as to third persons.

We submit that none of these cases are in point and that they do not support the ruling opinion.

The Court of Appeals also held that under the law as it was prior to the adoption of the Uniform Partnership Act, the existence of a general partnership "as between the parties themselves" was wholly a question of intention, and that therefore under Section 7 of the Uniform Act persons who did not intend to be partners as to each other cannot be partners as to third persons, and therefore the respondents were not partners at all.

This interpretation and application of Section 7 makes that section work a radical change in the law of partnership. It gives that section a very far-reaching effect indeed.

Under that section as it is interpreted and applied by the Circuit Court of Appeals, several persons, as respondents in this case, can associate themselves together, contribute capital to a banking or brokerage business, share profits and losses, enjoy all the advantages of a partnership, and then, when insolvency comes, if it can be made to appear that, although intending to enter into a relation with all the incidents of a partnership, they did not intend to be partners *inter se*, they are not liable as partners to third persons and escape all liability.

At common law it was the intention to enter into a relationship to which the law thereupon attached a partnership liability that was the criterion of a partnership.

The meaning of "intention" when used in ascertaining whether a partnership exists is a legal intention shown by acts, and as we are discussing the construction of an Illinois act, we cannot show what intention means better than is shown in the Illinois case next cited and by the authorities following it.

In *Fougner v. First National Bank*, 141 Ill. 124, it was said (p. 132):

"While the intention of the parties is the criterion by which to determine whether or not a partnership has been formed, yet, as said by Justice Matthews in his work on Partnership (page 12, Sec. 31): 'It is very plain that parties cannot by agreement, enter into a partnership, and at the same time agree that what they have entered into shall not be a partnership.' Or, in the language of Breese, C. J., in *Lintner v. Millkin*, 47 Ill. 178: 'Parties may become partners without their knowing it, the relation resulting from the terms they have used in the contract or from the nature of the undertaking. They may make a bargain together without knowing it, which creates or involves a partnership, and subjects them to the law of partnership.'"

Meehan v. Valentine, 145 U. S. 611, is probably the leading case in this country on partnership. In that case Mr. Justice Gray undertook, after careful analysis of the cases, and sources of the law, to lay down some fundamental principles covering the law as to creation of partnerships. His conclusion was (p. 623):

"In the present state of the law upon this subject it may perhaps be doubted whether any more precise general rule can be laid down than, as indicated at the beginning of this opinion, that those persons are partners who contribute either property or money to carry on a joint business for their common benefit and who own and share the profits thereof in certain proportions. If they do this, the incidents or consequences follow that the acts of one in conducting the partnership business are the acts of all; * * * that all are liable as partners upon contracts made by any of them with third persons within the scope of the partnership business; and that even an express stipulation between them that one shall not be so liable, though good between themselves, is ineffectual as against third persons."

Textbooks state the same doctrine. In 20 Ruling Case law, p. 833, it is said:

"The intent, the existence of which is deemed essential, is an intent to do those things which constitute a partnership. Hence, if such an intent exists, the parties will be partners notwithstanding that they intended to avoid the liability attaching to partners or even expressly stipulated in their agreement that they were not to become partners. It is the substance, and not the name, of the arrangement or contract between them which determines their legal relation toward each other."

Likewise in 30 Cyc., page 360, it is said:

"When a court is called upon to determine whether a particular contract constitutes a partnership between the parties thereto, its controlling purpose is to ascertain their intention as that is disclosed by the entire transaction. But the intention which controls in determining the existence of a partnership is the

legal intention deducible from the acts of the parties, and, if they intend to do a thing which in law constitutes a partnership, they are partners, although their purpose was to avoid the creation of such relation. Particular clauses in the contract, or even express statements that it does or does not constitute a partnership, are not conclusive upon the subject."

In holding that where parties intended to form a limited partnership but failed, they did not and could not become liable as general partners because they did not intend to be such, the court's construction of the statute is in direct conflict with the decisions of the Illinois courts, which have repeatedly held that on failure to secure the statutory protection through noncompliance with the limited partnership act, the partners *become liable as general partners*. In *Henkel v. Heyman*, 91 Ill. 96, the parties failed to properly file the statutory certificate and the court, holding them liable as general partners, said (p. 101):

"The common law did not admit of partnerships with a restricted responsibility, and the statute, therefore, authorizing limited partnerships must be substantially complied with, *or those who associate under it will be liable as general partners.*"

In *Manhattan Brass Co. v. Allin*, 35 Ill. App. 336, where the court found the certificate did not meet the statutory requirements, it was said (p. 341):

"It may be a hard case, and contrary to what the parties intended but did not express, to hold the appellees other than B. C. Allin as general partners; but the law is settled that 'the statute authorizing limited partnerships must be substantially complied with, *or those who associate under it will be liable as general partners.*'"

In *Walker v. Wood*, 69 Ill. App. 542 (affirmed 170 Ill. 463), one of the purported limited partners had signed

requisite certificate by an agent and the court said (p. 549):

"The case presents important questions but we sum up our opinion by saying that the statute under which limited partnerships may be formed was not complied with, and *unless that is done the partnership is general.*"

The decision of the Court of Appeals, therefore, is directly in conflict with the decisions of our state courts and creates an unfortunate divergence of judicial decision in this circuit.

There are many other authorities to the same effect. In 19 A. & E. Enc. of Law, 2nd Ed., p. 339, under the head of "Limited Partnerships," it is said:

"Generally a noncompliance with the statute will render the special partner *liable as a general partner.*"

And again (p. 343):

"The statutes authorizing the formation of limited partnerships all provide in what business such partnerships may engage. A limited partnership cannot be formed for the transaction of any business not authorized by statute, and an attempt to do so renders the firm an ordinary partnership *in which all the members are generally liable.*"

And again (p. 353):

"A false statement in the affidavit renders all members *liable as general partners*, and it is immaterial whether or not the special partner knew of the false statement or whether it was made intentionally or unintentionally, *or whether creditors were injured by it or not.*"

Many cases are cited in support of the text.

The interpretation put upon Section 7 by the Court of Appeals changes this long-established law and makes the intention to form a partnership *inter se* the final test of partnership as to third parties. If that intention was

not present, there is no partnership under any circumstances.

That the court realized that its interpretation of Section 7 worked a substantial change in the law of partnership is evidenced by its statement that with the wisdom of such a change of policy it was not concerned, and that if, under the construction given the statute the new test of partnership proved impracticable in experience, the remedy was with the legislature alone.

We do not believe the commissioners on uniform state laws, or the legislatures of Illinois and other states, in enacting the uniform general partnership law, intended any such far-reaching effect by Section 7. Section 6 defines a partnership. Under the court's interpretation of Section 7, although all the elements of a partnership as defined in Section 6 are present, if the parties did not intend between themselves to become partners, a partnership did not exist.

The further subdivisions of Section 7 explain its purpose. It is provided that a mere joint tenancy or common ownership of property or the sharing in gross profits or returns received, as interest on a loan, wages of an employee, annuity to a widow of a deceased partner, consideration for the sale of good will of the business, etc., do not constitute a partnership. This but declares a common law principle, except that a few courts have held that sharing in profits was a conclusive test of partnership and made the parties liable even though the profits were received as compensation by an employee, for a loan of money, etc. Section 7 was intended to clarify and unify the law of partnership in this regard.

However, as above interpreted and applied by the Court of Appeals, Section 7 is not a codification of the present law on partnership but works a most radical

change in that law. This interpretation will cause much uncertainty and confusion. If the Court of Appeals' interpretation is correct, no doubt those states that have adopted the Uniform General Partnership Act will wish by proper amendment to undo the mischief brought about by this section. No doubt, the commissioners on uniform law will wish to amend the draft of the act before submitting it for passage in other states. If, however, that court gave a far wider meaning to Section 7 than is justified by proper interpretation and its construction is not correct and is not to be followed by other courts, it would be a misfortune to amend the act and destroy its uniformity.

The development of the law by the commissioners on uniform laws is a very important juristic work. A final, authoritative interpretation of those statutes, and especially of Section 7 of the uniform act is necessary for the future guidance of the Commission on Uniform Laws.

RESPONDENTS DID INTEND TO FORM A PARTNERSHIP BETWEEN THEMSELVES.

To apply its interpretation of Section 7 and of the law of intention to this case, the Court of Appeals found as a fact that the respondents did not intend to become general partners as between themselves. As there was evidence to the contrary and as the District Court evidently found to the contrary, we do not see how the Court of Appeals could consider that question of fact.

To show how erroneous is such finding by the Court of Appeals, and that the parties *did intend* to enter into a partnership, we submit the following extracts from the final partnership agreement of April 2nd (signed June 30th). The first recital is:

"Whereas the said parties *desire to become part-*

ners with one another under the name of Marcuse & Co." (Rec. 26.)

"(1) The said parties above named have agreed to become *copartners in business* and by these presents do agree to be *copartners* to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission, stocks, bonds, grains, provisions and various commodities." (Rec., 26.)

"(6) It is further hereby agreed that all of the capital to be contributed as aforesaid, shall be used and employed by *the said partnership* for the purpose of carrying on the business agreed to be conducted under the terms hereof, and for no other purpose." (Rec., 27.)

"(12) Each of *the said partners*, both general and special, shall receive 6 per cent interest upon the capital contributed by him to the capital or capital stock of said firm and said sum shall be charged to the expense of operating the said business." (Rec., 29.)

"All of the balance of the said net profits of said business shall be divided among all of the parties hereto except the said Morris in the proportions in which they have contributed to the capital or capital stock of said firm." (Rec., 30.)

"All losses of every kind sustained in said business shall be paid by the *said copartners* in the same ratio and proportion as said profits are divided." (Rec., 30.)

The partnership agreement signed June 30th was signed by Marcuse, Morris, Hecht and Finn. (Rec., 33.) The so-called Hecht and Finn trust was signed by Hecht and Finn (Rec., 40), and on the succeeding page a certificate is attached thereto signed by Marcuse, Morris, Hecht and Finn "individually and as *copartners* under the firm name of Marcuse & Co."

There is hardly a paragraph in the agreement which does not refer to the parties as partners and the agreement as a partnership agreement.

The parties therefore understood and *intended* to enter into a partnership relation. They may have hoped or

intended to become limited partners but they did intend to become partners as to each other.

CONCLUSION.

The brokerage firm of Marcuse & Co. started business in Chicago on July 2, 1917. It continued in business for two years, incurred heavy liabilities and then failed for a large amount. It was admittedly not a limited partnership under the Act of 1874. It admittedly was not and could not have been a limited partnership under the Act of 1917. Yet, by an interlapping and interpretation of the uniform limited and uniform general acts of 1917, this organization was held not to be a partnership at all, and respondents, the owners of the business, sharing in its profits and its losses, not to be liable for its debts.

In reaching this remarkable result, the majority of the judges held that Section 11 of the Uniform Limited Partnership Act applied to an organization attempting, but failing, to organize as a limited partnership under the Act of 1874. They disregarded or refused to follow decisions of the Illinois courts directly in point. They construed Section 7 of the Uniform General Partnership Act to relieve respondents from all partnership liabilities to third persons. The district judge held otherwise and one of the judges of the Court of Appeals dissented, so that these far-reaching interpretations of the uniform partnership acts stand with the judges divided.

Unless this decision is reviewed by this court and an authoritative interpretation of these important sections of the two uniform partnership acts obtained, the work of the uniform commission will be seriously hampered.

We believe that the proper construction of these acts is a matter of such general public interest that this court, to assist the development of the work of the Uniform Commission, should review this case.

Because we believe the Court of Appeals has made a serious error in construing the sections of the Uniform Partnership Act involved in this cause, because we believe the construction given by it to those acts will bring infinite confusion into the law of partnership, while the intention is to make it uniform, because we believe that in the furtherance of the work and furtherance of the efforts of the commissioners on uniform laws, clear, authoritative, rational interpretation should be given to these acts, because we believe that questions of such importance ought not to stand upon the decision of a divided Court of Appeals overruling the *nisi prius* court, because we believe that uniformity and not divergence should prevail in construing the uniform partnership acts, and because we believe a great injustice has been done to our clients and to many other creditors of Marcuse & Co., which will entail great loss to the creditors and allow the owners of this great business to go scot-free, we respectfully present this petition for a writ of *certiorari* and this brief in support thereof.

CHICAGO, June, 1922.

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APPENDIX.

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 2855. OCTOBER TERM, 1921, JANUARY SESSION, 1922.

In the Matter of Marcuse & Co.,
Alleged Bankrupts.

Henry Vette, Peter M. Zuncker,
Theodore Regensteiner, Clem-
ent Studebaker, Jr., and
George M. Studebaker,

Petitioners,

vs.

C. B. Giles, John Janca, I. Fiegel,
Fred Mayer, E. H. Allen, *et al.*,

Respondents.

Petition to review and
revise order of the
District Court of
the United States
for the Northern
District of Illinois,
Eastern Division.

Before ALSCHULER, EVANS and PAGE, *Cir. JJ.*

Petitioners seek review and revision of an order of the District Court of July 1, 1920, finding in effect that petitioners, and Hecht, Finn, Marcuse and Morris were general partners of the firm of Marcuse & Co., against which original and supplemental petitions in bankruptcy had theretofore been filed, alleging all to be general partners, and referring the petition to a referee to ascertain the solvency of all of them as "composing the firm of Marcuse & Co." After filing of the petition to review and revise,

Hecht and Finn, though not petitioners, joined in the petition and asked review and revision of the order. They will, with the others, be considered and referred to as petitioners, Hecht, since deceased, appearing by his executor.

The record discloses that under date of April 2, 1917, all the alleged partners except the Studebakers (one Hoffman signing in his own name, but in fact as representing the Studebaker interest), executed an agreement which provided for carrying on at Chicago a brokerage business of buying and selling on commission stocks, bonds, grains, etc., for a period of five years from such date, under firm name of Marcuse & Co.; that such firm be a limited partnership under the statute of Illinois, Marcuse and Morris the general partners, and the others special partners; the contributions of the latter to be, Hecht \$25,000, Hoffman \$50,000, Vette \$30,000, Zuncker \$25,000, Finn \$31,500 and Regensteiner \$28,500 total \$190,000; that the business be conducted and managed by Marcuse and Morris, they to receive named salaries, and that on the contributions of Marcuse, Morris and of the special partners should be paid interest at 6 per cent *pr annum*; that thereafter 25 per cent of the net profits be paid to Marcuse to be applied by him on certain certificates which he would issue representing debts due from Von Frantzius & Co. (then in bankruptcy), all of such limited partners, except Vette and Zuncker, being large creditors of the Von Frantzius concern; and that after such certificates are paid, the said 25 per cent should be paid to all the parties to the agreement except Morris; that 10 per cent of the net profits of the business was payable to Morris, and the balance of profits was to be divided periodically between the parties in proportion to their contributions to the whole capital; that the special partners be limited in their liability to

the amounts respectively contributed to the capital, and that they should have no liability for debts of the partnership beyond such contributions; that Marcuse and Morris should be in charge of and carry on the business, and that the special partners shall have right to examine the books and have them audited, and in certain contingencies to have the business liquidated. After execution of the agreements they were left with one of the lawyers pending carrying out of certain conditions, mainly the dismissal of the Von Frantzius bankruptcy proceedings, with which concern Marcuse had been in some way connected.

One of the contributions of Marcuse toward the firm's capital was a seat on the New York Stock Exchange estimated to be then worth \$68,000. When in New York shortly after the agreement was signed, Marcuse learned that under the practice of the New York Stock Exchange, firms doing business there were not permitted to have more than two special partners, who must not be engaged in any other business. Marcuse at once notified his attorney in Chicago, and after further negotiation between the parties concerned or their representatives, another agreement was signed June 30, 1917 (but dated April 2, 1917), wherein the general partners were stated to be Marcus and Morris, and the special partners Hecht and Finn. The stated objects of the partnership, the name and the details respecting rights, duties and immunities of the parties, and the character and amount of capital contributions were in all essential features the same as under the first contract, except that Hecht and Finn, the special partners, each agreed to contribute \$95,000, and the term was five years from July 1, 1917. At the same time there was executed by Hecht and Finn an instrument under date of June 30, 1917, known as the "Hecht-Finn Trust," in which Hecht and Finn were

named as trustees, wherein after reciting the last named partnership agreement as being attached as an exhibit, and that Hecht and Finn held in trust all interest in the assets and income coming to them under said partnership agreement, it is provided that the trustees shall direct that any distribution to be made to them by the partnership under the terms of the partnership agreement be paid over by the partnership to the Chicago Title & Trust Company on account of the "Hecht-Finn Trust," to be by the Chicago Title & Trust Co. distributed among the holders of trust certificates under the Hecht-Finn Trust. It was provided that these trust certificates should be issued by the Chicago Title & Trust Co. to evidence 380 shares each of \$500, and that the interest represented should be subject to the terms and conditions of the Hecht-Finn Trust; that the certificates were transferable only upon the books of the Chicago Title & Trust Co., and that the original certificate holders and holdings should be, Hecht 50, Finn 63, Hoffman 100, Regensteiner 57, Vette 60 and Zuncker 50, a total of 380, or \$190,000. It was agreed that the profits earned by the partnership should be drawn out at least twice a year, and the Hecht-Finn share be paid by the partnership to the Chicago Title & Trust Co., and by it ratably distributed among the registered holders of the certificates. It was provided that in certain contingencies the certificate holders might name an auditor to audit the accounts of the firm, and that in the case of the death of Hecht and Finn, certificate holders might choose another to be the special partner in the concern.

The trust instrument was by endorsement thereon assented to by the Chicago Title & Trust Co. and by Marcuse and Morris, who agreed to do all things therein provided to be done by the partnership. On June 30th the parties met and delivered their respective checks for the

amount of their several contributions (representing in each case the amount of the Hecht-Finn Trust certificate holding), the checks of the certificate holders being made to Hecht and Finn who endorsed them to the firm. The check of the Studebaker interest was one of the Studebaker Bros. Trust to Hoffman, who endorsed it to Hecht and Finn as trustees, they in turn endorsing it to Marcuse & Co. Some days later the trust certificates, dated June 30th, were issued in the amounts and to the persons as stated, the Studebaker certificate being issued to Hoffman, who at once endorsed it over to Mr. Gardner, secretary of the Chicago Title & Trust Co., for the Studebaker Bros. Trust. A certificate of limited partnership, drawn in accordance with the then limited partnership law of Illinois, was duly executed. It was dated April 2nd, signed by Marcuse, Morris, Hecht and Finn, recited contribution of \$95,000 each by Hecht and Finn, and that the partnership was to commence July 1, 1917, and terminate June 30, 1922. Acknowledgment and oath were dated June 30th. The first partnership contracts were never delivered, and it was testified that some time in July they were canceled by tearing off the signatures thereon.

June 30, 1917, was Saturday, and the banks and county offices closing at noon, the transaction could not be completed that day. The following Monday, July 2nd, the certificate of limited partnership was filed in the office of the County Clerk of Cook County, and the checks were all deposited to the credit of the firm, excepting that of Hecht. As to this Hecht had requested Marcuse to withhold temporarily deposit of it, and it was not deposited until about the end of July. It appears that Hecht's bank account was during all that month prior to the deposit of his check, much smaller than the amount of this check. His banker testified that had the check

been deposited at any time it would have been paid regardless of his balance. The supposed limited partnership of Marcuse & Co. began to transact business July 2, 1917 (although for some time theretofore Marcuse and Morris had been carrying on the brokerage business under the same name at the same location), and continued in business until the filing of the petition in bankruptcy in March, 1920.

The "Studebaker Bros. Trust" was made in 1916 between petitioners George M. and Clement Studebaker, "Grantors," the Chicago Title & Trust Company, "Trustee," and Scott Brown, "Manager." It recites that the grantors had delivered to the trustee certain moneys and properties of value as stated in the schedules, and contemplated the delivery of other money and property owned by the grantors, and that the grantors are desirous of creating such money and property into a trust fund to be employed and operated for the use of the grantors; that the *corpus* of the trust fund shall be ultimately divided between the grantors in proportion to their contributions thereto. It sells, assigns and transfers to the trustee all such moneys and properties, to be held by the trustee under the enumerated terms of the trust. Brown was to be manager, in charge of the office, and to keep books of account, and with the grantors constituted the first board of directors. The directors had power to direct the policy of the trust, and the investment of the trust funds, and Brown was subject to removal as director by the other two. He was to receive a salary, and had a contingent interest in the profits of the trust. The grantors were to be beneficially interested in the trust fund and its income and profits in proportion to their contribution.

On July 1, 1917, there became effective in Illinois the Uniform General and Special Partnership Statutes. The

latter made radical changes in the law of Illinois regarding limited partnerships, in the matter of their formation and manner of manifesting same, and provided *inter alia* that thenceforth there shall be no special or limited partnerships formed in the State of Illinois for carrying on brokerage business. It repealed the prior statute on limited partnerships.

Shortly after it appeared in the bankruptcy proceedings that it was contended on behalf of creditors of the firm that no limited partnership was in fact effected, and that all the petitioners herein became under the law general partners with Marcuse and Morris, Hecht and Finn unconditionally tendered and paid into court \$46,000 for the alleged bankrupt estate by way of interest and profit paid out by the firm to the investors of the entire \$190,000 since the organization of the firm, including interest thereon from time of payment, such payment being made on the theory that thereby they were relieved from general partnership liability by virtue of Section 11 of the Uniform Limited Partnership Act. The uncontradicted evidence is that the amount thus paid was sufficient to cover these items. The payment, although of an amount equal to what was thus received by all the certificate holders, was made by Hecht and Finn without the consent or approval of the others, and without contribution on their part thereto.

Apart from the documentary evidence, there was oral evidence tending to show that the first limited partnership contract was completely abandoned, and that thereafter the Studebakers and Vette and Zuncker absolutely declined to enter into any limited partnership whatever, and that the final contract, including the Hecht-Finn Trust, was in good faith what it purported to be, and to no extent a device for carrying out the plan of the first contract, and circumvent the rule of the New York Stock

Exchange respecting limited partners. Other oral evidence tended to establish such intended circumvention as the real purpose of the later papers, and that the true intent of all the parties was to carry out the terms of the limited partnership contract as it was first proposed.

Opinion by ALSCHULER, *Cir. J.*, after making foregoing statement:

The primary issue is whether under above stated facts petitioners are liable as general partners with Marcuse and Morris. Then there is the question whether, in case Hecht and Finn are so liable, the liability can be extended also to the other petitioners, who do not by the finally executed contract purport to have entered into any partnership arrangement of any sort, and the further question whether the Studebakers can in any event be held general partners in view of the fact that the Studebaker contribution was made by and for "Studebaker Bros. Trust." The various contentions will be stated as they are below considered.

For respondents it is strongly urged that the reduction of the first agreed number of special partners from five to two, and the "Hecht-Finn Trust," with certificates to manifest the interest of each contributor, was a fraud and a device conceived for the purpose of avoiding the objection of the New York Stock Exchange to limited partnerships having more than two special partners, and to any special partners being engaged in other business. There was evidence from which the District Court could have reached this conclusion; and doubtless it did so conclude; and such conclusion of fact, reached upon contradictory evidence, we may not disturb in this proceeding to review and revise as to the law. But would such

finding warrant the conclusion that the ostensible limited partners, and the certificate holders all became general partners with Marcuse and Morris? Applying to the transaction the epithet of fraud does not change its true nature or its incidents. If it had been intended that all should be general partners, and the device was for the purpose of concealment, and protection of some from general liability, the court would look through the form to the actual intent and purpose of the parties. But the record affords not even suggestion of such intent. If the contribution of \$190,000 was in good faith made to the capital of the partnership, it is not readily understandable what material difference it would make whether it was in fact contributed by two or by twenty. It does not appear that by such device to avoid the stock exchange ruling, the creditors of the partnership were in any degree defrauded or periled. If the New York Stock Exchange is a creditor, and has been to its detriment misled through the alleged fraudulent device, its rights and remedies against those who participated therein remain unaffected by the bankruptcy. But in the entire absence of any showing of detriment occasioned thereby to the creditors generally, or in fact to any of them, the utmost that could be visited upon the participants of this deception would be to hold that they occupy toward this partnership, and its creditors, the same relation as do Hecht and Finn, viz.: that of such who from July 1, 1917, erroneously believed and assumed that they then entered upon a limited partnership. Assuming therefore that the transactions of June 30th and July 2nd were colorable in that, while a limited partnership was intended as to all the petitioners, it was carried out in form to deceive the New York Stock Exchange as to the number of its special partners, this deception would not of itself serve to fasten on the deceivers the liability of general

partners. Respondents urge that in this statement of the contributors as set forth in the filed certificate there was such falsity as under the old Illinois act would result in all becoming general partners, notwithstanding the stated total was in fact contributed. Under the rigors of the old law this might have been so, but the contention of unlimited liability rests mainly on the nonapplicability of the old statute, through failure to complete the organization and begin business thereunder, and file the limited partnership certificate until after the repeal of the act requiring it, and the resultant nonapplicability of the old statute.

It is apparent that none of the parties to the contract, or the certificate holders under the Hecht-Finn Trust contemplated or supposed that general partnership liability was assumed by any of them except Marcuse and Morris; and it was the evident understanding and belief of all that the others, whether called special partners or certificate holders, would have no liability beyond their investment, and no participation in the conduct and control of the business, which was by the agreement committed wholly to Marcuse and Morris. Had the limited partnership been fully perfected while the Act of 1874 was yet in force, these investors would probably have incurred no liability beyond their investment. At any rate this was their intention, regardless of whether under the circumstances under that law this would have been the result.

If under the old law the certificate or affidavit filed was materially false, the statutory result was to make all liable as general partners. Many other states had or have similar statutory provisions, and the courts have quite generally construed such provisions strictly against the limited partners. To such extent was this tendency recognized in the mercantile world that it was considered

hazardous for one to invest money in a partnership enterprise upon the faith of compliance with limited partnership statutes, which were quite commonly regarded as a trap to catch the unwary rather than a proper means to a desirable end.

To relieve from such undue hazard, and make more safe to investors not participating in the business, the employment of their capital in partnership enterprises, as well as to bring about uniformity in such matters, the "Uniform Limited Partnership Act" was drafted, and submitted to the legislatures of the different states. Several of the states have adopted it. It passed the Illinois Legislature as drafted, in June, 1917, and became a law without the governor's signature June 28th, effective three days afterwards, July 1, repealing the Act of 1874.

It indicates a policy with respect to this subject quite the reverse of that of its predecessor. While Section 8 of the old act provided that the limited partnership shall not be deemed formed until the certificate as specified has been filed, and that any false statement in the certificate required to be signed by all the parties, or in the affidavit required to be signed by one of them, shall result in all the persons being general partners, the provisions of the Uniform Limited Partnership Act as to such matters are significantly otherwise. Section 2 provides that the limited partnership is formed when there has been *substantial* compliance in good faith with the requirements of the law, and as to false statements Section 6 provides, not that thereby general partnership results as to all, but only as to those who executed the certificate knowing it to be false, and in favor of those only who suffer loss through reliance thereon. Provision is made for admitting other limited partners, and for the assignment of limited partnership interests, and for the limited partner to loan money to, and transact

business with the partnership as an outsider might do, and for one to be at the same time a limited and a general partner. Section 24 provides for amendment of the certificate when there is a false or erroneous statement therein, or when the members desire to make in it any change that shall accurately represent the agreement between them. To insure construction as of remedial legislation, Section 28 provides that the rule of strict construction of statutes in derogation of the common law shall not apply to the act. Section 11 provides that "a person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with a person or in a partnership carrying on a business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

Although on July 2, 1917, when this supposed limited partnership deal was supposedly consummated through delivery of the executed agreements, filing of certificate, deposit of checks and beginning of the business, and from that time to the time of the bankruptcy all the parties were under the belief that they were a limited partnership duly organized under the law of Illinois, it appears that in this they were clearly mistaken, because the law under which they attempted so to qualify had been repealed before their organization was completed, certificate filed, and business begun, and they did not comply with the new act, either in the form of the certificate or in the filing of it for record in the recorder's office as required under the new law, the filing having been in the office of the county clerk as the old law pre-

scribed; and also because the new law provides that limited partnerships shall not be organized for the carrying on of brokerage business.

As set forth in the statement of facts the record shows that after the filing of the intervening petition charging that all were general partners, Hecht and Finn undertook to avail themselves of the provisions of Section 11 by unconditionally paying into court for the alleged bankrupt estate \$46,000 which represents the profits and income which, during the course of the business, had been paid on this \$190,000 of capital, with interest from time of payment, and it is the contention that this payment operates to relieve from general partnership liability the theretofore supposed special partners, including all the certificate holders under the Hecht-Finn trust.

It is earnestly contended that because the Uniform Limited Partnership Act prohibits the formulation of a limited partnership to carry on the business of brokerage, Section 11 cannot in any event afford relief. But Section 11 is very broad in its terms. It is not limited to instances where there has been an attempted compliance with the provisions of the new act. It includes in its terms any person who at any time contributed to a partnership, erroneously believing himself to be a limited partner.

There are other sections which amply provide for the correction of errors and irregularities in organization and for amendment of statements in accordance with the facts, thereby perfecting and confirming the special partnership, without incurrence of general liability. This section is not designed to amend or correct or perfect the limited partnership organization, so that it may thereafter continue as such, but looks rather to the termination of the relation, and relief from general liability on compliance with the terms of the section in all those

cases where persons erroneously believed they had become limited partners, without regard to whether or not the belief was induced by supposed compliance with this or any other act. This view not only comports with the words of the section, but with the evident general purpose of the act to give effect, so far as may be done, to the *bona fide* intent of parties, and to relieve from the extreme consequences of honest mistakes, which the prior law and its strict interpretation entailed. The erroneous belief may be as to the nature of the business which may be organized into a limited partnership as well as to any other matter of law or of fact, which induced the error. In this respect we do not conceive Section 11 to be different in its effect as part of the new law than if it had been adopted as an amendment to the old.

It is further contended that Section 11 does not contemplate one may wait for two or three years, and until bankruptcy overtakes the concern before undertaking to have the benefit of the section. Such state of facts would go only to an issue upon the good faith of the asserted erroneous belief, and the prompt renunciation of interest in the profits and income of the business, after learning of the error. One can scarcely imagine circumstances under which error might have been more readily induced than those which this record presents. The new law had manifestly not then been published, and the three days which intervened between the time it became law and the time it became effective, hardly gave opportunity for public discussion thereon. After the business started it does not appear that there was occasion for investigation as to its organization, nor that this was challenged, until about the time the concern got into difficulty. Even the New York Stock Exchange does not appear to have questioned its validity as a limited partnership. Consideration of the very exceptional cir-

circumstances shown, induce quite inevitably the conclusion that during all the time this business was carried on, it was in the honest though erroneous belief of all connected with it, that it was a limited partnership, and that within reasonable promptness after ascertainment of the true status, it was undertaken to comply with the conditions imposed by Section 11, albeit this was after petition in bankruptcy was filed.

In the statutory condition that "he promptly renounces his interest in the profits of the business other compensation by way of income" there may be some ambiguity; but in this case the record shows the compliance was to the fullest extent that might be claimed on behalf of creditors, and it is not contended that the unconditional payment of the \$46,000 falls short of compliance with the section, if the section has application. The fact that elsewhere in the act amendment, correction and perfection of the organization are adequately provided for, assist to the conclusion that Section 11 contemplated situations where a limited partnership could not under the law be formed at all, or where, because of intervening conditions, it would not be practicable to perfect or continue it.

But it is urged that in no event can Vette, Zuncker, Regensteiner and the Studebakers have advantage of Section 11, because of their denial that they ever became limited partners, and their consequent want of belief that they were such. The relief afforded by the section is to a person "erroneously believing that he has become a limited partner in a limited partnership." The instance is, and the court evidently so found, that Hecht and Finn, although appearing as the only special partners, were in truth and in fact representing as well the other petitioners herein, whose relation to the partnership was found to be not different from that of Hecht

and Finn. Their connection with the partnership being thus traced through their representation by Hecht and Finn, it follows that if such representation would operate to charge them, they should in good conscience also have the benefit of whatever Hecht and Finn may have done which would bring relief from the charge. If therefore it appears that Hecht and Finn believed themselves to be special partners (and there can be no doubt that they did so believe), their representative capacity held to exist as to a part of the contributed capital would extend and inure to those whom they are thus held to have represented. The restitution having been made on the entire \$190,000 of supposed special partnership contributions, and having been of an amount sufficient for compliance with Section 11 by all the petitioners, part of them should not be denied its benefit, because of their insistence that they were not members of any partnership at all, limited or general. Limited liability is the dominating feature of a limited partnership, and petitioners, other than Hecht and Finn, resting as they did under the belief that they had effectually contracted for limited liability, it is our view that if Section 11 applies at all, the fact that their real purpose was shown to have been the formation of a limited partnership, will not deprive them of the benefit of Section 11, if the compliance with its terms included in fact all the petitioners, assuming, as we do, that the record fails to show credit was extended to the firm on the faith that petitioners were general partners.

Petitioners insist that, apart from other contentions, under the record here they are protected from a general partnership liability by the provisions of the Uniform Partnership Act adopted in Illinois passed at the same time and in the same manner as the Uniform Lim-

ited Partnership Act, and likewise effective July 1, 1917.

Let it be assumed that Section 11 of the limited partnership act has no application whatever to partnerships carrying on brokerage business, and that persons erroneously believing themselves to be limited partners in such business cannot in any event be relieved from general liability by compliance with Section 11. The rights and liabilities of such persons must then be tested by and under the law governing general partnerships, which in Illinois, from and after July 1, 1917, was the Uniform Partnership Statute.

This act, conceived and born with the Uniformed Limited Partnership Act, indicates similar purpose of relieving from risk of incurring partnership liability where the general partnership relation was not by the parties intended. It prescribes that the rule of strict construction of statutes in derogation of common law shall have no application to the act, Section 4 (1), and defines a partnership to be "an association of two or more persons to carry on as co-owners a business for profit." Section 6 (1). The contractual relation of petitioners does not fall within this definition. It cannot strictly be said that they became co-owners. They contributed \$190,000 which, unless lost in the venture, would eventually be returned to them. In this respect it differed from a loan of funds to the partnership, with division of profits in compensation for the loan, only to the extent that in the one case the creditors of the partnership may resort to the amount so contributed, free from participation of any claim of the contributor as a creditor, while the loaner would for his loan be upon parity with other creditors. Petitioners had no proprietary interest in, or title to, or dominion over the property of the partnership; neither had they under the contractual relation any

right, power or duty in the carrying on of the partnership business. As to the conduct of the business they were strangers in quite the same sense that a loaner of funds would have been.

While receipt of profits has in some instances been held conclusively to presume partnership as to creditors, section 7 (4) makes this presumption *prima facie* only.

Section 9 (1) provides that every partner is the agent of the partnership for the purposes of the business. But under this contract none of petitioners had or could have had any right to do a single act whereby the partnership would have been bound. The contract either as first drawn or as afterwards entered into gave them no right or power to act for the partnership, and the record does not disclose any holding out or assumption of agency.

Section 7, under the subtitle "Tests in determining the existence of a partnership" prescribes that "In determining whether a partnership exists these rules shall apply: (1) Except as provided by section 16, persons who are not partners as to each other are not partners as to third persons."

Under the law as it was prior to the adoption of the Uniform Partnership Act the existence of general partnership as between alleged partners was a question wholly of their intention, to be gathered from their agreement. *Goacher v. Bates*, 280 Ill. 372; *National Surety Co. v. Townsend Brick etc. Co.*, 176 Ill. 156. In the last cited case it was said, "While the agreement with Adams Brothers to share one-half the profits and losses might raise a presumption of partnership, yet if the parties actually meant that there was to be no partnership created, and so contracted, the presumption would be rebutted." In *Grinton v. Strong, et al.*, 148 Ill. 587, the court said, "Even where parties enter into a

joint enterprise and share in the profits, a partnership, as between themselves, is not necessarily the result. The intention of the parties always controls." So in *Smith v. Knight, et al.*, 71 Ill. 148, where Knight agreed to put money into a commission business and was to receive ten per cent per annum, and the share of the commissions, but was not to be liable for losses, the court, passing on the alleged partnership of Knight, said, "In determining this question the intention of the parties must be considered. Written articles of copartnership may be so expressive as to leave no room for doubt. So far as these articles of agreement are concerned we discover nothing in them evidencing an intention to form a partnership." And in *Ins. Co. v. Barringer*, 73 Ill. 230, the court said, "Whether a partnership exists or not depends upon the intention of the parties. Parties may be partners as to third persons when not so between themselves." In *London Assurance Co. v. Drennen*, 116 U. S. 461, it was said, "The mere participation in profits would give no such (partnership) interest contrary to the real intention of the parties. Persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist."

If we are correct in saying that, as between Marcuse and Morris on the one hand and the petitioners on the other, it was the distinct intent and purpose that there should be no general partnership, then as between themselves they did not become general partners. Undoubtedly contracts are conceivable wherein the parties may call themselves partners, where from the things actually agreed upon the partnership relation does not exist; and on the other hand, they may in terms declare they are not partners, when the very things they have agreed upon supply all the elements of partnership, and they

would become partners despite their declaration to the contrary.

By the terms of this contract petitioners were to have no participation in the conduct of the business, could not in any manner contract for or bind the firm, and were not to be liable for losses beyond their several contributions to its capital. The existence of a partnership between themselves may be tested by the query whether in case of loss of the entire capital of the concern, and payment by Marcuse and Morris of its debts, they might have contribution from petitioners as in partnership. Undoubtedly under the contractual relation here shown they could not. We conclude that in any event, as between themselves, petitioners were not general partners with Marcuse and Morris.

If section 7 (1) means what it says, then this alleged general partnership does not respond to the prescribed statutory test that "persons who are not partners as to each other are not partners as to third persons." The section is all-inclusive, and has application to alleged partnerships of all kinds, whether for the carrying on of brokerage or any other business, and wholly regardless of whether the parties were or were not acting under the belief that they had created a limited partnership. The act manifests a definite purpose of making paramount the contractual intent of the parties to the agreement, as a test for fixing a general partnership liability rather than, as often theretofore, by way of penalization for participation in profits, or doing other things which held parties to general partnership liability, when general partnership was not contemplated or intended, and was not in fact effected as between themselves.

With the wisdom of such change in policy as is manifested by the Uniform Partnership acts we are not of

necessity here concerned. There is reason for each view; but we are not at liberty to reject the test which the statute fixes. If experience shows the statutory test to be impractical and unwise, the remedy is with the legislature alone. The record discloses no such situation as would suggest that the application here of that test involves hardship or inequity toward the creditors generally. It shows nothing to indicate that creditors were beguiled into extending credit to the firm on the faith that the petitioners (particularly the others than Hecht and Finn) were general partners, nor that petitioners held themselves out as such partners, or did any other of those things which, under Section 16 of the act, might entail upon them general partnership liability.

We conclude that petitioners, not having assumed general partnership relation with Marcuse and Morris, did not as to others become partners with them.

We find no reported decisions construing the statutory provision above considered. A salutary principle of construction of statutes designed to be uniformly adopted by the states, is found in *Commercial Bank v. Canal Bank*, 239 U. S. 520, where the Uniform Warehouse Receipts Act was under consideration, and the court said it "should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it."

While these proceedings will in nowise interfere with any creditor of the alleged bankrupt undertaking to establish elsewhere or otherwise liability to him of any or all of petitioners by virtue of Section 16 of the Uniform Partnership Act, we find that, resolving in favor of respondent all disputed questions of fact, the law as applied to the record here does not warrant the inclusion of petitioners in the order of reference on the question of solvency of Marcuse & Co. This conclusion makes

it unnecessary to consider the proposition that the Studebaker interest in the concern belonged wholly to Studebaker Brothers Trust, and not to the Studebakers as individuals, and that therefore they can in no event be held liable as partners.

The order here under review is revised by eliminating therefrom the names of all the petitioners herein, leaving the revised order to include Marcuse and Morris only as the general partners in the alleged bankrupt firm of Marcuse & Company. Petitioners are adjudged their costs.

EVANS, C. J., dissenting: In view of the large sums involved, I feel justified in setting forth somewhat fully my reasons for this dissent.

The district judge, after hearing the evidence, found that petitioners were general partners of the firm of Marcuse & Co., against whom a petition in bankruptcy had been filed. The order of reference thereupon made to determine the solvency of the partnership as enlarged, petitioners now seek to review and revise. Only questions of law are therefore presented. *In re Hoyne, Bankrupt*, 277 Fed. 668. On this record we can consider but one question: Is there *any* evidence to support the conclusion of the district judge?

The district judge failed to make specific findings of fact, but we must assume that such findings as were essential or might be necessary to support his conclusions were by him found in favor of respondents. His conclusion that petitioners were general partners makes such a position unavoidable.

Respondents urge that there was oral evidence tending to show that the written agreement of the parties was but a cover to the real understanding; that, in order to prevent the enforcement of the liability arising out

of a general partnership, the parties executed a written agreement which on its face purported to be a limited partnership. Finding that such a partnership could not transact business on the New York Stock Exchange, a new agreement was executed for the purpose of deceiving the New York Stock Exchange and with the further object of preventing any detection of the real status of the parties in case an enforcement of the partnership liability was later attempted by any creditor of the firm.

If there is any evidence in the record to support the position of the respondents, we must accept it as established. *In re Hoyne, Bankrupt, supra*. Nor are respondents limited upon this inquiry to direct evidence. Their position may find support in the inferences fairly deducible from the established facts.

Respondents, however, do not rely solely upon this contention, but assert in addition, that should we conclude, in executing the agreement under consideration, the parties intended the formation of a limited partnership only, nevertheless petitioners occupy the status of general partners in the partnership because limited partnerships to conduct a brokerage business were not authorized in the State of Illinois. My reasons for dissenting will be confined to this contention only.

Briefly it may be said that the parties to this agreement on July 2, 1917, and continuously thereafter to a date subsequent to these bankruptcy proceedings associated themselves together for the conduct of a brokerage business wherein each party contributed toward the common capital and wherein the profits were divided according to the contribution.

The status of the parties to the contract, then, must necessarily have been that of (a) limited partners, (b) general partners, or (c) creditors.

By a process of elimination we can readily exclude any finding that petitioners were creditors.

All of the evidence points to the denial of the relationship of debtor and creditor. It is not urged in this court except inferentially. The parties never intended to create such a relationship. The definite period during which the agreement was to remain in force, viz., five years, tends to disprove such a status. In the agreement we find the parties provide, "The said parties above named have agreed to become *copartners* in business and by these presents agree to be *partners to one another* under the name and style of Marcuse & Co." Also, "The net profits of said business shall be divided among the partners thereto in manner as follows. * * * All the balance of said net profits of said business shall be divided among all of the parties hereto, except the said Morris, in the proportions in which they have contributed to the capital or capital stock of said firm."

The so-called trust agreement executed by Hecht and Finn recognizes the relation of the petitioners to Marcuse and Morris as being that of partners by saying, "Whereas, under the terms and provisions of said Articles of Agreement reference to which is hereby made, the undersigned, said Frank A. Hecht and said Joseph M. Finn, by reason of their relation to said firm as special partners, are, and will from time to time become entitled to certain payments and distributions of the copartnership assets and the income, interest and profits of and upon said assets."

In the partnership agreement the so-called special partners were authorized to name auditors of the business of said copartnership who were authorized to examine the books and might certify in writing that the business was not being conducted in a "safe, conservative and judicious manner," or that the general partners

were "not properly managing the business," in which case a dissolution of the partnership was authorized at the option of the special partners. The control of the business by the so-called special partners is indicative of a partnership, and the provision for the *dissolution of the firm* confirms the conclusion that petitioners were not simply creditors.

The case is quite unlike the case of *In re Hoyne, Bankrupt*, recently decided by this court, where the parties designated themselves and treated themselves as debtors and creditors. The oral testimony of certain witnesses likewise recognized all of the parties as partners and nothing else. A finding that petitioners were not creditors, which the court necessarily made when it found them partners, must then not only be accepted on this petition to review and revise, but, it may be added, was the only finding that could be fairly reached from this record.

Not being creditors, the parties were either members of a limited partnership or members of a general partnership.

The law of Illinois, where the contract was executed and where the business of the partnership was to be conducted, must define petitioners' status. The Uniform Partnership Act covers both limited and general partnerships and was in force at the time this contract went into effect. It is idle to discuss the history of the passage of this Act. Whether it received the governor's signature or became effective by operation of law, whether it had long been in effect, or not, are questions apart and disassociated from the question of construction. The Uniform Partnership Act represents the law of partnership and so far as applicable must govern the contract of the parties. In passing it might be observed that but for the existence of the Uniform Partnership Act the conten-

tion that petitioners were general partners because of the authority of the special partners and the provision for control of the business through the auditors might be quite as potent as the argument respondents now urge.

The parties' rights and their liabilities are fixed by the terms of the Uniform Partnership Act, however, and our inquiry must be directed to the effect of the Act upon the agreement, and this in turn becomes a question of statutory construction.

Unquestionably it was the intention of the legislature to enlarge the usefulness of the limited partnership as an instrument in the conduct of business. To accomplish this intention, then, courts should give the Act a liberal construction.

It is equally certain that, because of the danger of great loss through its use in certain fields of industry, the legislature denied its use to those who wished to engage in the banking, insurance, railroad or brokerage business. This manifest intent, clearly expressed in section 3, must likewise find expression in the construction of the statute.

There is no authority to conduct business under the Uniform Limited Partnership Act except for the legitimate purposes therein described. Section 3 reads: "A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, brokerage and the operation of railroads."

It is not necessary to inquire into the reasons for excepting these four businesses, but if ground for the exception in Sec. 3 be required, neither imagination nor speculation need be awakened to suggest the motive and the purpose back of the legislation. The facts in the present case furnish a most persuasive argument in favor of the wisdom of the legislation that denied to those who

would engage in the banking, the insurance, the railroad or the brokerage business the right to do so through a limited partnership.

Notwithstanding the express language of the exception in this section, the construction and the effect of which are not open to question, a conclusion has been reached that sanctions and gives legality to a course of dealing the authority for which is expressly denied.

But petitioners seek to avoid the effect of section 3 by referring to section 11 of the Act which reads, "A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

Passing for the moment the two issues raised by respondents in reference to this section, denial of any renunciation by certain of the petitioners and failure of all of them to renounce during the life of the partnership, and taking up at once the construction and effect of this section 11, it is apparent that we are confronted with a question of statutory construction, concerning which the rules applicable are well recognized. For example, the entire Act must be read and effect given to each section, if possible. If full effect cannot be given to the language of each section, then the overlapping sections must be read together and reconciled.

The Limited Partnership Act is readily analyzed. By its first section the term, limited partnership, is defined. Section 2 provides the steps which must be taken by any

two or more persons desirous of forming a limited partnership. Section 3 defines the businesses which may be carried on by limited partnerships. The other sections deal with the rights and liabilities and powers of partners who organize under this Act.

In other words, section 11 was written with section 3 as its background. The words, "limited partnership" obviously meant a partnership organized under this Act, a partnership for the purpose of conducting a business authorized under this Act. "Limited partnership" referred to lawful associations not to those organized in defiance of the statute. The relief authorized by section 11 was limited to those cases where bona fide attempts to organize limited partnerships under the provisions of the Act had been made.

The force of this conclusion is strengthened by sections 30 and 31 of the Act. In the former section the legislature used the heading "Existing Limited Partnerships," while in section 31 a further reference is made to "existing limited partnerships." "Limited partnerships" as distinguished from "existing limited partnerships" must refer to those organized under this Act. We can hardly attribute to the legislature an attempt to give the same term different meanings in the same act.

Again speaking of the partnership the legislature in section 11 referred to "the partnership carrying on the business," etc. What business could the legislature have referred to other than a lawful business, a business for the conduct of which a partnership could be lawfully organized.

In this same section 11 we find a reference to "the rights of a limited partner." Section 10, the preceding section, is entitled "Rights of a Limited Partner." Can it be that the legislature was at one moment referring to limited partnerships organized under and by virtue of

this Act, and to the rights and liabilities of limited partners as defined by this Act, and was in the same sentence including limited partnerships organized in defiance of the Act?

Moreover, there could be no erroneous belief that the Uniform Limited Partnership Act had been complied with, for the parties were not only ignorant of the existence of the law, but in their agreement they expressly stated that they were endeavoring to organize under the law of 1874, which was expressly repealed by the later enactment.

Reference to the General Partnership Act cannot in my opinion help the petitioners. It is true that section 7 of the Partnership Act provides that "Persons who are not partners as to each other are not partners as to third persons," but section 6 of the same act also provides "This act shall apply to limited partnerships, except in so far as the statutes relating to such partnerships are inconsistent herewith." Section 3 of the Limited Partnership Act necessarily destroys the test applied by section 7 of the General Partnership Act in so far as it deals with those engaged in the brokerage business. A general partnership is defined by the Act as "an association of two or more persons to carry on as co-owners a business for profit." Since two or more persons cannot conduct the brokerage business through a limited partnership, it follows that when such persons engage in the brokerage business as co-owners for profit they are necessarily general partners.

But, could I agree that section 11 applied to limited partnerships organized under these circumstances and for a purpose forbidden by the Act, I would still find myself unable to agree that as to all petitioners there was a renunciation such as is required by section 6 to relieve them of the liability of general partners.

To renounce means "to reject deliberately, to disown, to disavow, to disclaim." Ordinarily it involves personal action knowingly done, or, to quote from Black's Law Dictionary, "it implies an affirmative act of disclaimer or disavowal."

In the present case Hecht and Finn, after adjudication in bankruptcy and with enormous liability as general partners facing themselves and others, attempted to repay to the partnership the profits previously drawn by the petitioners. As to the petitioners other than Hecht and Finn such repayment could not be a renunciation unless such parties either ratified or authorized such repayment. The record shows that the petitioners other than Hecht and Finn not only failed to ratify or authorize such repayment, but when requested to do so and prior to such tender refused to authorize Hecht and Finn to make any such payment for them or to be bound by the trustees' action in case such repayment was made.

The evidence on this issue is clear and unequivocal, but if it were doubtful or uncertain, we would, on this petition to review and revise, be required to assume that petitioners other than Hecht and Finn did not renounce their interest in the profits promptly after discovering they were not limited partners.

It is not necessary in this dissenting opinion to consider the status of Clement Studebaker, Jr. and George M. Studebaker. Their position is somewhat different from that of the other petitioners. Whether that difference would be sufficient to relieve them from the liability of general partnerships, I need not discuss. Since this is a minority opinion and since the majority of the court are of the opinion that none of the petitioners were general partners, it is not necessary to consider or discuss the evidence which furnishes the basis for the contention that these two petitioners were not general partners with Marcuse and Morris.

OCT 8 1923

WM. B. STANLEY

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, ET AL.,
Petitioners,

vs.

HENRY VETTE, ET AL.,
Respondents.

APPENDICES TO BRIEF AND ARGUMENT FOR EXECUTORS OF
FRANK A. HECHT AND JOSEPH M. FINN, RESPONDENTS.

Containing

ILLINOIS LIMITED PARTNERSHIP ACT OF 1874.
ILLINOIS LIMITED PARTNERSHIP ACT OF 1917.
ILLINOIS GENERAL PARTNERSHIP ACT OF 1917.

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INDEX TO APPENDICES.

	PAGE
APPENDIX A—Illinois Limited Partnership Act of 1874.....	1
APPENDIX B—Illinois Limited Partnership Act of 1917.....	6
APPENDIX C—Illinois General Partnership Act of 1917.....	17



APPENDIX A.

LIMITED PARTNERSHIPS.

[ACT OF 1874.]

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| § 1. Limited partnerships may be formed. | § 12. Notice of dissolution. |
| § 2. General partners — special partners. | § 13. Special provisions in case of death. |
| § 3. General partners only, to act. | § 14. Who continue business—rights of heirs, etc. |
| § 4. Certificate of partnership. | § 15. Dissolution for fraud or misbehavior. |
| § 5. Certificate acknowledged. | § 16. Firm name. |
| § 6. Record of certificate. | § 17. Suits—parties. |
| § 7. Affidavit. | § 18. Capital stock—interest. |
| § 8. Filing for record necessary—false statements. | § 19. Powers of special partner. |
| § 9. Publication of terms of partnership. | § 20. Accounting. |
| § 10. Proof of publication. | § 21. Penalty for fraud. |
| § 11. Renewal of limited partnership. | § 22. Preferences forbidden. |
| | § 23. When special partner not to claim as creditor. |

An Act to revise the law in relation to limited partnerships. (Approved March 18, 1874. In force July 1, 1874.) [Hurd's Rev. Stat. Ill. 1915-16, Ch. 84.]

§ 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That hereafter it shall be lawful to form limited partnerships within this state, according to the provisions of this act.

§ 2. Limited partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons who shall contribute a specific amount of capital, in cash, or other property at cash value, to the common stock, who shall be special partners, and who shall not be liable for the debts of the partnership beyond the amount of the fund so contributed by them, respectively, to the capital stock, except as hereinafter provided.

§ 3. The general partners, only, shall be authorized to transact business, to sign for the partnership, and to bind the same.

§ 4. The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.

2. The general nature of the business to be transacted.

3. The names of the general and special partners therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital stock which each special partner shall have contributed to the common stock.

5. The period at which the partnership is to commence, and the period when it will terminate.

6. They may also, if they shall elect, provide in the certificate the terms upon which the partnership may be dissolved, and may provide that the same shall not be dissolved by the death of any of the partners.

§ 5. Such certificate shall be acknowledged by the several persons signing the same, before some officer authorized by law to take the acknowledgment of deeds; and such acknowledgment shall be made and certified in the manner provided by law for the acknowledgment of deeds for the conveyance of land.

§ 6. The certificate, so acknowledged and certified, shall be filed in the office of the clerk of the county in which the principal place of business shall be situated, and shall be recorded at large by the clerk, in a book to be kept by him; and such book shall be subject, at all reasonable hours, to the inspection of all persons who may choose to inspect the same. If the partnership shall have places of business situated in different counties, a transcript of such certificate, and of the acknowledgment thereof, duly certified by the clerk in whose office it shall have been filed, under his official seal, shall be filed and recorded, in like manner, in the office of the clerk of every such county; and the books containing such records shall be subject to inspection, in the manner above directed.

§ 7. At the time of filing the original certificate, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the amount in money, or other property at cash value, specified in the certificate to have been contributed by each of the special partners to the common stock, has been, actually and in good faith, contributed and applied to the same.

§ 8. No such partnership shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed, as above directed; and if any false statement shall be made in such certificate or

affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

§ 9. The partners shall publish the terms of partnership, when recorded, for at least six weeks, unless the partnership be sooner dissolved, immediately after recording the same, in some newspaper, such newspaper to be one printed and of general circulation in the county in which the business is to be carried on, or if no such newspaper is published in such county then in the county nearest thereto in which a newspaper shall be published; and if publication be not made, as herein provided, the partnership shall be deemed general.

§ 10. Affidavits of publication of such notices by the printer or publisher of the newspaper in which the same has been published, may be filed with the clerk directing the same, and shall be evidence of the fact therein contained.

§ 11. Upon the renewal or continuance of a limited partnership beyond the time for which it was first created, a certificate shall be made, acknowledged, recorded and published, in like manner as is provided in this act for the formation of limited partnerships; and the affidavit of one or more of the general partners, as above provided, shall also be filed with the proper county clerk, as aforesaid. And every such partnership which shall not be renewed or continued in conformity with the provisions of this section, shall be deemed a general partnership.

§ 12. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the registry in which such certificate was recorded, and in every other registry where a copy of such certificate was recorded, and unless such notice shall also be published six weeks, successively, in some newspaper printed in the county where the certificate of the formation of such partnership was recorded; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the said notice of such dissolution shall be published in some newspaper printed in an adjoining county.

§ 13. The articles of co-partnership may provide what, in case of the decease of any of the general partners, shall be the relative rights of the heirs and legal representatives of the general partners, respectively,

upon what contingency the death of any of the general partners shall operate as a dissolution of the partnership, and how and in what manner the business of such partnership shall be carried on in case of the decease of any of the general partners, and such agreement shall be binding upon all the parties to such partnerships, their heirs and legal representatives.

§ 14. When it is provided in the articles of co-partnership and said certificate that the death of a general or special partner shall not work a dissolution of the firm, the surviving general partner shall continue the business for the time provided for in the certificate, and in the manner provided in the articles of co-partnership: *Provided*, that the heirs and legal representatives of a deceased general partner, unless otherwise provided in the articles of co-partnership, or otherwise agreed upon between them and the surviving partners, shall stand in the same relation to the partnership as a special partner, subject to no greater liabilities and entitled to the same relative rights.

§ 15. Nothing in this act contained shall be so construed as to prevent the dissolution of any limited partnership at any time, on account of the fraud or misbehavior of any partner, nor to prevent the compelling of an account of the partnership business, or the protecting of the rights of any parties interested in any court of competent jurisdiction.

§ 16. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, and if the name of any special partner shall be used in such firm with his privacy, he shall be deemed a general partner.

§ 17. All suits respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this act that the special partnership may be deemed a general partnership, in which cases all the partners deemed general partners may join or be joined in such suit; and excepting, also, those cases where special partners shall be held severally responsible, on account of any sum by them received or withdrawn from the common stock, as herein provided.

§ 18. No part of the sum which any special partner has contributed to the capital stock shall be withdrawn or paid to him in the shape of loans, dividends, profits or

otherwise, at any time during the continuance of the partnership; but any partner may, annually, receive lawful interest on the sum so contributed by him or profits actually accrued, if the payment of such interest or profits does not reduce the original amount of his capital. If it appear that, by the payment of any such interest or profits to any special partner, the original capital has been reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the capital stock without interest.

§ 19. A special partner may, from time to time, examine into the state and progress of the partnership concerns, may advise as to their management, and act as attorney in fact, but shall not transact any other business nor be employed for that purpose as agent or otherwise, without the express assent of all the general partners, and if he interfere contrary to the provisions of this section he shall be deemed a general partner.

§ 20. The general partners in every such partnership shall be liable to account to the special partners, and to each other, for the management of the concern, both in law and equity, as other partners.

§ 21. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court.

§ 22. It shall not be lawful for any such partnership, nor any member thereof, in contemplation of bankruptcy or insolvency, and with the intention and for the purpose of paying or securing any one or more of their creditors in preference to any other of their creditors, to make any sale, conveyance, gift, transfer or assignment of their property or effects, or to confess any judgment, or to create any lien whatsoever upon their property or effects; and every such conveyance, gift, transfer or assignment involving such judgment or other lien, shall be and the same is hereby declared to be utterly void.

§ 23. In case of bankruptcy or insolvency of partnership, no special partner shall be considered or allowed to claim as a creditor under any circumstances, except for money loaned by him to such partnership, until the claims of all the other creditors of the partnership shall be satisfied.

APPENDIX B.

LIMITED PARTNERSHIPS.

[ACT OF 1917.]

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|---|---|
| § 1. Definition of limited partnership. | § 16. Withdrawal of limited partners contribution. |
| § 2. Certificate of organization—contents—to be recorded—substantial compliance sufficient. | § 17. Liability of limited partner to partnership. |
| § 3. To carry on any business—exceptions. | § 18. Nature of interest of limited partner in partnership. |
| § 4. Contributions. | § 19. Assignment of limited partners' interest. |
| § 5. Use of surname of limited partner. | § 20. Effect of retirement, death or insanity of general partner. |
| § 6. Liability for false statements in certificate. | § 21. Death of limited partner. |
| § 7. Limitation of liability. | § 22. Rights of creditors of limited partner. |
| § 8. Additional limited partners. | § 23. Distribution of assets. |
| § 9. Limitation upon powers of general partners. | § 24. When certificate shall be cancelled or amended. |
| § 10. Rights of limited partners. | § 25. Requirements for amendment or cancellation of certificate. |
| § 11. Person believing himself to be a limited partner not to be held as general partner. | § 26. Parties to actions. |
| § 12. One person both general and limited partner. | § 27. Name of Act. |
| § 13. Business transactions with limited partner. | § 28. Rules of construction. |
| § 14. Relations of limited partners <i>inter se</i> . | § 29. Rules for cases not provided for in this Act. |
| § 15. Compensation—limited partners. | § 30. Provisions for existing limited partnerships. |
| | § 31. Acts repealed. |

(HOUSE BILL NO. 303. FILED JUNE 28, 1917.) [LAWS 1917, p. 569;
Hurd's Rev. Stat. Ill., 1917, Ch. 106, §§45-75.]

AN ACT to make uniform the law relating to limited partnerships.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly: A limited partnership is a partnership formed by two or more persons under the provisions of section 2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.*

§ 2. FORMATION.] (1) Two or more persons desiring to form a limited partnership shall

(a) Sign and swear to a certificate, which shall state

I. The name of the partnership,

II. The character of the business,

III. The location of the principal place of business,

IV. The name and place of residence of each member;
general and limited partners being respectively designated.

V. The term for which the partnership is to exist,

VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,

VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,

VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,

IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,

X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,

XI. The right, if given, of the partners to admit additional limited partners,

XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,

XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File for record the certificate in the office of the recorder of deeds of the county where the principal office of such limited partnership is located.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1).

§ 3. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, brokerage and the operation of railroads.

§ 4. The contributions of a limited partner may be cash or other property, but not services.

§ 5. (1) The surname of a limited partner shall not appear in the partnership name, unless

(a) It is also the surname of a general partner, or

(b) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

§ 6. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in section 25 (3).

§ 7. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

§ 8. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 25.

§ 9. (1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

(a) Do any act in contravention of the certificate,

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership,

(c) Confess a judgment against the partnership,

(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,

- (e) Admit a person as a general partner,
- (f) Admit a person as a limited partner, unless the right so to do is given in the certificate,

(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

§ 10. RIGHTS OF A LIMITED PARTNER.] (1) A limited partner shall have the same rights as a general partner to

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 15 and 16—

§ 11—A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing [believing] that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

§ 12. ONE PERSON BOTH GENERAL AND LIMITED PARTNER.] (1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

§ 13—LOANS AND OTHER BUSINESS TRANSACTIONS WITH LIMITED PARTNER.] (1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a *pro rata* share of the assets. No limited partner shall in respect to any such claim

(a) Receive or hold as collateral security any partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (1) is a fraud on the creditors of the partnership.

§ 14. RELATION OF LIMITED PARTNERS INTER SE.] Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

§ 15. COMPENSATION OF LIMITED PARTNERS.] A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; *provided*, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

§ 16—WITHDRAWAL OR REDUCTION OF LIMITED PARTNER'S CONTRIBUTION.] (1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution

(a) On the dissolution of a partnership, or

(b) When the date specified in the certificate for its return has arrived, or

(c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when

(a) He rightfully but unsuccessfully [unsuccessfully] demands the return of his contribution, or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph

(1a) And the limited partner would otherwise be entitled to the return of his contribution.

§ 17. LIABILITY OF LIMITED PARTNER TO PARTNERSHIP.]

(1) A limited partner is liable to the partnership

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

§ 18—NATURE OF LIMITED PARTNER'S INTEREST IN PARTNERSHIP.] A limited partner's interest in the partnership is personal property.

§ 19. ASSIGNMENT OF LIMITED PARTNER'S INTEREST.] (1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substantial limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 25.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited part-

ner does not release the assignor from liability to the partnership under sections 6 and 17.

§ 20. EFFECT OF RETIREMENT, DEATH OR INSANITY OF A GENERAL PARTNER.] The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners

- (a) Under a right so to do stated in the certificate, or
- (b) With the consent of all members.

§ 21. DEATH OF LIMITED PARTNER.] (1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

§ 22. RIGHTS OF CREDITORS OF LIMITED PARTNERS.] (1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate [separate] property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this Act shall be held to deprive a limited partner of his statutory exemption.

§ 23. DISTRIBUTION OF ASSETS.] (1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order;

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners,

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions,

(c) Those to limited partners in respect to the capital of their contributions,

(d) Those to general partners other than for capital and profits,

(e) Those to general partners in respect to profits,

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

§ 24. WHEN CERTIFICATE SHALL BE CANCELLED OR AMENDED.] (1) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies, or becomes insane, and the business is continued under section 20,

(f) There is a change in the character of the business of the partnership,

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

§ 25. REQUIREMENTS FOR AMENDMENT AND FOR CANCELLATION OF CERTIFICATE.] (1) The writing to amend a certificate shall

(a) Conform to the requirements of section 2

(1a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) Be signed and sworn to by all members and an

amendment substituting a limited partner or adding a limited or a general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the (here designate the proper court) to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the recorder of deeds in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled [cancelled] when there is filed for record in the office (here designate the office designated in section 2) where the certificate is recorded.

(a) A writing in accordance with the provisions of paragraph (1) or (2) or

(b) A certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this Act.

§ 26. PARTIES TO ACTIONS.] A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

§ 27. NAME [NAME] OF ACT.] This Act may be cited as the Uniform Limited Partnership Act.

§ 28. RULES OF CONSTRUCTION.] (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect.

§ 29. RULES FOR CASES NOT PROVIDED FOR IN THIS ACT.] In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

§ 30. PROVISIONS FOR EXISTING LIMITED PARTNERSHIP.] (1) A limited partnership formed under any statute of this State prior to the adoption of this Act, may become a limited partnership under this Act by complying with the provisions of section 2; *provided* the certificate sets forth

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this State prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the provisions of an Act entitled, "An Act to revise the law in relation to limited partnerships," approved March 18, 1874, in force July 1, 1874, except that such partnership shall not be renewed unless so provided in the original agreement.

§ 31. ACT (ACTS) REPEALED.] Except as affecting existing limited partnerships to the extent set forth in section 30, the Act entitled "An Act to revise the law in relation to limited partnerships," approved March 18, 1874, in force July 1, 1874, is hereby repealed.

FILED June 28, 1917.

This bill having remained with the Governor ten days, Sundays excepted, the General Assembly being in session, it has thereby become a law.

Witness my hand this twenty-eighth day of June, A. D. 1917.

LOUIS L. EMMERSON, *Secretary of State*.

APPENDIX C.

PARTNERSHIPS.

UNIFORM ACT [1917].

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| § 1. Uniform Partnership Act. | § 24. Property rights of partner. |
| § 2. Terms defined. | § 25. Partnership property—rights of parties. |
| § 3. When a person has knowledge and notice. | § 26. Interest of partner. |
| § 4. Rules of construction. | § 27. Effect of conveyance of interest of partner. |
| § 5. Rules of law and equity to govern in certain cases. | § 28. Judgment—and decree of court. |
| § 6. Definition of partnership. | § 29. Dissolution of partnership defined. |
| § 7. Rules to determine whether or not a partnership exists. | § 30. Effect of dissolution. |
| § 8. Partnership property. | § 31. When dissolution is caused. |
| § 9. Authority of partner to bind the firm, etc. | § 32. Decree of dissolution by court. |
| § 10. Conveyance of partnership real estate. | § 33. Dissolution terminates authority of partners to act for the partnership. |
| § 11. Admission of partner. | § 34. Liability of partners <i>inter se</i> , upon dissolution. |
| § 12. Notice to partner is notice to partnership—exception. | § 35. Effect of dissolution upon power of partner to bind the firm. |
| § 13. Liability of partnership for acts of partner. | § 36. Dissolution not to discharge liabilities of partners. |
| § 14. Misapplication of property of third persons. | § 37. Who may wind up partnership affairs. |
| § 15. Joint liability of partners. | § 38. Application of partnership property to pay partnership debts. |
| § 16. Liability for holding oneself out as a partner. | § 39. Rights of partners upon rescission of partnership contract for fraud or misrepresentation. |
| § 17. Liability of person admitted to partnership for past obligations. | § 40. Settlement of accounts between partners. |
| § 18. Rights and duties of partners <i>inter se</i> . | § 41. Admission or retirement of partners. |
| § 19. Partnership books. | § 42. Contribution of business after death or retirement of partner. |
| § 20. Information must be furnished partner or legal representative. | § 43. Right to account on dissolution of partnership. |
| § 21. Partner must account to partnership for profits derived in a partnership transaction. | § 44. Repeal. |
| § 22. When partner may have formal account of partnership affairs. | |
| § 23. When continuation of partnership is evidence. | |

(HOUSE BILL NO. 302. FILED JUNE 28, 1917.) [Laws 1917, p. 624; Hurd's Rev. Stat. Ill. 1917, Ch. 1060, §§1-44.]

AN ACT relating to partnerships and promote uniformity in the law with reference thereto.

PART I.

PRELIMINARY PROVISIONS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly: This Act may be cited as Uniform Partnership Act.*

§ 2. In this Act "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent Act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

§ 3. (1) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this Act when the person who claims the benefit of the notice

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

§ 4. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) The law of estoppel shall apply under this Act.

(3) The law of agency shall apply under this Act.

(4) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This Act shall not be construed so as to impair

the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect.

§ 5. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

PART II.

NATURE OF A PARTNERSHIP.

§ 6. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this Act, unless such association would have been a partnership in this State prior to the adoption of this Act; but this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

§ 7. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 16, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

- (a) As a debt by installments or otherwise;
- (b) As wages of an employee or rent to a landlord;
- (c) As an annuity to a widow or representative of a deceased partner;

(d) As interest on a loan, though the amount of payment vary with the profits of the business;

(e) As the consideration for the sale of the good-will of a business or other property by installments or otherwise.

§ 8. PARTNERSHIP PROPERTY.] (1) All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP.

§ 9. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An Act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

- (b) Dispose of the good-will of the business;
- (c) Do any other act which would make it impossible to carry on the ordinary business of the partnership;
- (d) Confess a judgment;
- (e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

§ 10. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

§ 11. An admission or representation made by any partner concerning partnership affairs within the scope of his authority is conferred by this Act is evidence against the partnership.

§ 12. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

§ 13. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

§ 14. The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

§ 15. All partners are liable

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

§ 16. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation

has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

§ 17. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

PART IV.

RELATIONS OF PARTNERS TO ONE ANOTHER.

§ 18. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contribution, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in

respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

§ 19. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

§ 20. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

§ 21. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

§ 22. Any partner shall have the right to a formal account as to partnership affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 21.

(d) Whenever other circumstances render it just and reasonable.

§ 23. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is *prima facie* evidence of a continuation of the partnership.

PART V.

PROPERTY RIGHTS OF A PARTNER.

§ 24. The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

§ 25. (1) A partner is co-owner with his partners of a specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this Act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

§ 26. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

§ 27. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

§ 28. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the part-

nership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this Act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

PART VI.

DISSOLUTION AND WINDING UP.

§ 29. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

§ 30. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

§ 31. Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business *bona fide* in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dis-

solution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 32.

§ 32. (1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership or agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss.

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 28 or 29:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

§ 33. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

(1) With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires.

(2) With respect to persons not partners, as declared in section 35.

§ 34. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

§ 35. (1) After dissolution a partner can bind the partnership except as provided in paragraph (3)

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution,

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs, except by a transaction with one who

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1b II).

(4) Nothing in this section shall affect the liability under section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

§ 36. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

§ 37. Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: *Provided, however*, that any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

§ 38. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, *bona fide* under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36 (2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

I. All the rights specified in paragraph (1) of this section, and

II. The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2a II) of this section, and in like manner indemnify him against all present or future partnership liabilities,

(c) A partner who has caused the dissolution wrongfully shall have:

I. If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1), subject to clause (2a II), of this section,

II. If the business is continued under paragraph (2b) of this section the right as against his co-partners and

all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

§ 39. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

§ 40. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are;

I. The partnership property,

II. The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

I. Those owing to creditors other than partners,

II. Those owing to partners other than for capital and profits,

III. Those owing to partners in respect of capital,

IV. Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by section 18 (a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

I. Those owing to separate creditors,

II. Those owing to partnership creditors.

III. Those owing to partners by way of contribution.

§ 41. (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of

the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38 (2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

§ 42. When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41 (1, 2, 3, 5, 6,) or section 38 (2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership: *Provided*, that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 41 (8) of this Act.

§ 43. The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

PART VII.

MISCELLANEOUS PROVISIONS.

§ 44. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

FILED June 28, 1917.

This bill having remained with the Governor ten days, Sundays excepted, the General Assembly being in session, it has thereby become a law.

Witness my hand this twenty-eighth day of June, A. D. 1917.

LOUIS L. EMMERSON, *Secretary of State*.

SEP 24 1923

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, ET AL.,
Petitioners,

vs.

HENRY VETTE, ET AL.,
Respondents.

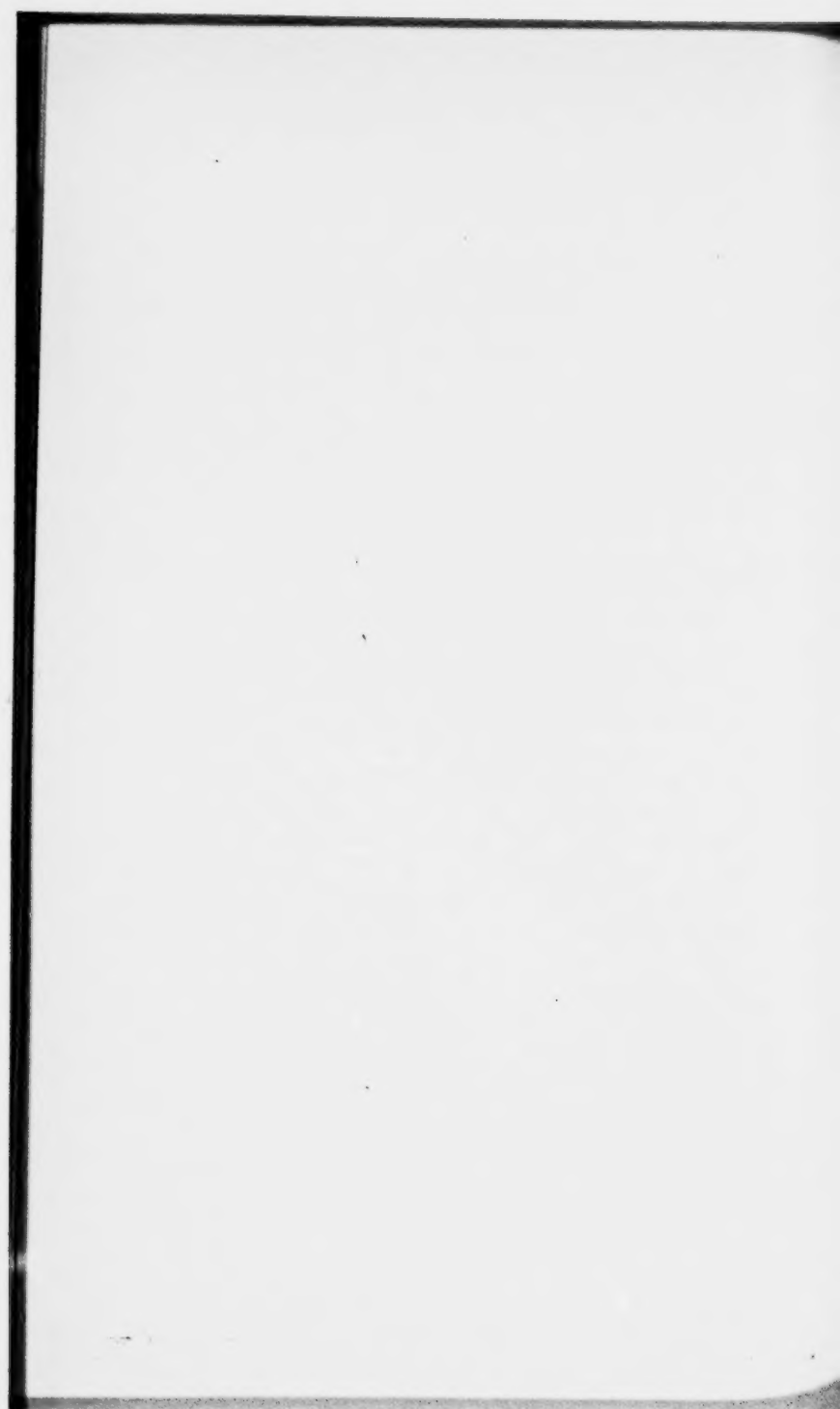
BRIEF AND ARGUMENT FOR RESPONDENTS, VETTE, ZUNCKER,
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INDEX.

	PAGE
STATEMENT OF FACTS.....	1-19
Arrangement of April 2, 1917.....	2-3
Abandonment of arrangement of April 2, 1917.....	3-4
Change of attitude	5-6
Hecht-Finn trust agreement.....	6-7
Selection of Hecht and Finn as limited partners....	8
Execution of definitive agreements, Exhibits A and B	8-9
Studebaker Bros. Trust.	9-10
Filing of limited partnership certificate.....	10
Contributions of Hecht and Finn.....	10-11
Hecht and Finn held out as limited partners only...	11
Dividend payments	11-12
No conflict of evidence.....	13
The Illinois Limited Partnership Act of 1917.....	13-14
Pleadings	14-16
Original petition	14
Lachman petition.	14
Tender and payment by Hecht and Finn	14-15
Text of Section 11 of Uniform Limited Partner- ship Act.	15
Answers of Hecht and Finn to original and in- tervening petitions	15
Amended petition	15-16
Answers of these respondents to amended peti- tion	16
Evidence improperly admitted	16-17
Order of the District Court	17
Decision of Circuit Court of Appeals.....	18-19
Additional defenses of these respondents not passed upon	19

BRIEF—POINTS AND AUTHORITIES.	20-23
Writ of certiorari improvidently issued and should be dismissed	20
I. Hecht and Finn not liable as general partners, and, therefore, these respondents are not liable because	
(A) Section 11 of Limited Partnership Act was fully complied with.	20
(B) Neither Hecht and Finn nor these respond- ents liable as partners under Uniform Gen- eral Partnership Act, irrespective of Sec- tion 11.	21
II. Even if Hecht and Finn were liable as partners these respondents could not be held liable, be- cause	
(A) The Hecht-Finn trust created no relation of partnership	21
(B) Even if the Hecht-Finn trust did create a partnership it was a subpartnership be- tween Hecht and Finn and these respond- ents	22-23
(C) Studebakers not even certificate holders. . . .	23
ARGUMENT.	23-135
Writ of certiorari improvidently issued.	23-25
Issues	26
I. Neither Hecht and Finn nor these respondents were general partners of Marcuse & Co.	27-73
(A) Under Section 11 of the Uniform Limited Partnership Act Hecht and Finn are not liable as general partners of Marcuse & Co., and therefore, these respondents are not liable.	27-64
Compliance with Section 11	30

Application of Section 11.	30
History and purpose of Uniform Limited Partnership Act	30-32
Theory of Uniform Limited Partnership Act.	32-35
Uniform Act expressed a new public policy.	35-37
Decisions under old acts have no application.	38
Contentions of petitioners in respect of Section 11.	39-41
Status of limited partnership determined by new act	41-44
Tender and payment were not necessary.	44-47
Position of these respondents as to tender and renunciation	47-50
Belief of Hecht and Finn.	50-56
Alleged falsity of limited partnership certificate	56-61
Buckley v. Lord	61-62
Under Uniform Act only person injured can recover because of false statement.	62-64
Contention as to false statement has no application to these respondents.	64
(B) Irrespective of Section 11, respondents are not partners under provisions of Uniform Partnership Act	65-73
Persons not partners as to each other are not partners as to third persons.	65-70
Respondents did not intend to be partners.	66-70
Respondents not partners within definition in Uniform Act	70-73

II. Even if Hecht and Finn were liable as partners (which is denied), these respondents would not be liable.	74-135
No element of estoppel	74-75
The status of the parties must be determined from the written instruments, Exhibit A and Exhibit B.	75-78
(A) The Hecht-Finn Trust created a trust.	78-107
Analysis of Exhibit B.	78-93
Section 5 of Exhibit B.	86-88
Section 7 of Exhibit B.	89
Section 9 of Exhibit B.	90-91
Sharing profits.	93-99
Sharing of losses.	99-100
Agency as a test of partnership.	101-102
Hecht's Exhibits 2, 3, 4 and 5.	103-106
(B) If exhibit created a partnership it would be a subpartnership and subpartners are not liable as partners.	107-113
(C) The two Studebakers were not even certificate holders and cannot be held liable on any theory.	113-117
<hr/>	
The question of circumvention.	116-126
The trial court's findings.	126-130
The questions involved are questions of law.	130-132
Conclusion.	134-135

TABLE OF CASES.

James Bailey Company v. Darling, 111 Atl. (1920, Me.) 410, 412, 413.....	95, 96, 97
Baldwin v. Patrick, 91 Pac. (Colo.) 828.....	100
Bank v. Morris, 43 Iegal Intelligence (Pa.), 56..	22, 111
Barker v. Western Union Tel. Co. 134 Wis. 147, 114 N. W. 349, 440, 441, 126 Am. St. Rep. 1017, 14 L. R. A. (N. S.) 533.....	55
Bates, Law of Partnership, p. 169.....	22
Beecher v. Bush, 45 Mich. 188, 7 N. W. 785, 40 Am. Rep. 465.	77, 101
Briggs v. Kohl, 132 Ill. App. 484, 486, 487.....	96
Brotherton v. Gilchrist, 144 Mich. 274, 107 N. W. 890, 891.	101
Burnett v. Snyder, 11 Jones & Spencer (N. Y.), 238	61
Burnett v. Snyder, 76 N. Y. 344, 348, 349....	22, 109, 112
Burnett v. Snyder, 81 N. Y. 550, 37 Am. Rep. 527, 531.	22, 45, 96, 109, 111, 112
Bushnell v. Consolidated Ice Machinery Co. 138 Ill. 67, 74, 75	21, 67
Bybee v. Hawkett (C. C. A. 6), 12 Fed. 649.....	22, 109
Cassidy v. Hall, 97 N. Y. 159, 168.....	94
Channon v. Stewart, 103 Ill. 541, 543.....	86
City Bank v. Bank of Republic, 300 Ill. 103.....	38
Clark In re (Dist. Ct. Wash.), 1901, 111 Fed. 893 894.	75
Clark v. Mallory, 185 Ill. 227, 232.....	76
Clark v. Barnes, 34 N. W. (Iowa), 419, 420.....	100
In re Cole (C. C. A. 1st Cir.), 163 Fed. 180.....	131
In re Cole (C. C. A. 1st Cir.), 144 Fed. 392, 393..	130-132
Cook v. Moore, 65 Mass. (11 Cush.) 213, 216, 217....	55
Commercial National Bank v. Canal-Louisiana Bank, 239 U. S. 520, 526, 528, 529.....	20, 36

Crehan v. Megargel, 234 N. Y. 67, 136 N. E.	
296.	21, 59, 62, 81, 82, 83
Crehan v. Megargel (N. Y. App. Div.), 192 N. Y. S.	
290, 299.	22, 60, 112
Crocker v. Malley (1919), 249 U. S. 223, 232 233, 22, 82, 88	
Current v. Muir, 99 Minn. 1, 108 N. W. 870.	77
Evans v. Hanson, 42 Ill. 234, 237.	76
Fougnier v. First National Bank of Chicago, 141 Ill.	
124, 132.	76, 101
Freed v. Central Trust Company of Ill. (C. C. A. 7th	
Cir. 1914) 215 Fed. 873, 876.	131
Furness W. & Co. v. Yang-Tsze Ins. Ass'nt. 242 U. S.	
430, 61 L. Ed. 409, 37 Sup. Ct. Rep. 141.	25
Gardt v. Brown, 113 Ill. 475, 479.	77
Goacher v. Bates, 280 Ill. 372 376.	21, 67
Good v. Kane (C. C. A. 8th Cir.) 211 Fed., 956 . . .	130-131
Grantham v. Connor, 154 Pac. (Kans.), 246, 247. . .	100
Greenleaf on Evidence (16th Ed.), Vol. I, p. 67 . . .	100
Grinton v. Strong, 148 Ill. 587, 596.	21, 67, 76
Haines & Co. Estate, 176 Pa. 354; 35 Atl. 237, 238. . .	96
Hendricks v. Webster (C. C. A. 8th Cir.), 159 Fed.	
927, 929.	76, 77
Home Lumber Company v. Hopkins (1920), 190	
Pac. (Kans.), 601, 604.	22, 84
Jackson v. Haynie's Admr. 109 Va. 365, 56 S. E.	
148.	97
Johnson v. Lewis, 6 Fed. 27, 28.	22, 82
Jones v. Burnham, Williams & Co. (C. C. A. 3rd	
Cir.), 138 Fed. 986.	75
Jones v. Gould, 209 N. Y. 419, 424.	22, 82
Kaplan, In re (C. C. A. 7), 1916, 234 Fed. 866	75
Kelly v. Gaines, 24 Mo. App. 506, 514, 515.	96

Kisner v. Taliaferro (C. C. A. 4th Cir.), 202 Fed.	
51	130
In re Charles Knosher & Co. (C. C. A. 3rd Cir.),	
197 Fed. 136, 140	131
In re Kuhn Bros. (C. C. A. 7th Cir. 1916), 234 Fed.	
277, 279, 280	131
Layne & Bowler, Corporation v. Western Wells	
Works, decided on April 9, 1923, Advanced Opin-	
ions, U. S. Supreme Court (67 L. Ed. p. 497) ..	20, 24
Larsen v. Postal-Tel.-Cable Co. 150 Iowa, 748; 130	
N. W. 813, 815	55
Lawrence v. Merrifield, 42 N. Y. Sup. Ct. 36—af-	
firmed 73 N. Y. 590	60, 61
Leport v. Todd, 32 N. J. Law, 124, 129, 131	55
London Assurance Co. v. Drennen et al. 116 U. S.	
461, 472.	21, 67
Mackie-Clemens Fuel Co. v. Brady (1919), 208	
S. W. 151, 152	
Mayfield v. Turner, 180 Ill. 332, 336	76
Mayo v. Moritz, 151 Mass. 481; 24 N. E. 1083.	22, 82
McKallip v. Geese, 30 Okl. 33; 118 Pac. 586	73
Merchants National Bank v. Barnes, 52 N. Y. Supp.	
786, 789	96
Meyer v. Krohn, 114 Ill. 574, 581	22, 112
Municipal Paving Co. v. Herring, 50 Okla. 470; 150	
Pac. 1067, 1069.	73
National Surety Company v. Winslow, 173 N. Y.	
(Minn.), 181, 183	87, 97, 100
National Surety Company v. Townsend Brick Co.,	
74 Ill. App. 312, 315; affirmed 176 Ill. 156, 161	94
Niehoff v. Dudley, 40 Ill. 406, 410	95, 100
O'Connor v. Sherley, 107 Ky. 70; 52 S. W. 1056 ..	22, 112

Parchen v. Anderson, 5 Mont. 438; 5 Pac. 588, 599; 51 Am. Rep. 65	101
Parker v. Fergus, 43 Ill. 437, 441	95, 96
Phillips v. Phillips, 49 Ill. 437, 439.....	21, 67
Pierpont v. Lanphere, 104 Ill. App. 232, 236, 237 ..	76, 101
Pinson & Co. et al. (Dist. Ct. Ala.), 180 Fed. 787, 789.....	75
Reed v. Engel, 237 Ill. 628, 631.....	21, 67
R. I. Hospital Trust Co. v. Copeland, 98 Atl. (R. I.), 273, 279.	22, 84
Rockafellow v. Miller, 107 N. Y. 507, 510.....	22, 111
Ruddick v. Otis et al. 33 Iowa, 402.....	100
Sample v. Farson, 174 Ill. App. 334, 338.....	94, 100
Schultz v. Plankinton Bank, 141 Ill. 116, 120, 123..	77
Setzer v. Beale, 19 W. Va. 274, 287, 288.....	22, 112
Shea v. Lewis (C. C. A. 8th Cir.), 206 Fed. 877, 884..	132
Smith v. Knight, 71 Ill. 148, 150, 151.....	94
Spingarn v. Rosenfeld, 24 N. Y. S. 733, 736.....	77
Stafford v. Sibley, 17 So. (Ala.), 324, 325.....	100
Standard Sewing Mach. Co. v. Leslie (C. C. A. 7th Cir.), 78 Fed. 325, 328.....	76
Stettauer et al. v. Hamlin, etc. 97 Ill. 312, 318.....	76
Street v. Thompson, 229 Ill. 613, 618, 619.....	86
Todd v. Todd, 221 Ill. 410, 413, 414.....	55
Taylor v. Davis, 110 U. S. 330, 334	93
Union Machinery & Supply Co. v. Darne, 1, 226 Wash. 154; 154 Pac. 183, 185.....	77
United States v. Rimer, 220 U. S. 547; 55 L. Ed. 578; 31 Sup. Ct. Rep. 596.....	25
Wells-Stone Mercantile Co. v. Grover, 75 N. W. (N. Dak), 911, 916.	22, 82
Williams v. Fletcher, 129 Ill. 336.....	94
Williams v. Milton, 215 Mass. 1, 10, 11; 102 N. E. 355, 358, 359.....	21, 82, 88
Winter v. Pipher, 96 Ia. 17; 64 N. W. 663.....	100

CASES CITED BY PETITIONERS.

Buckley v. Lord, 24 How. Pra. 455.....	37
Henkel v. Heyman, 91 Ill. 96.....	37
Manhattan Brass Co. v. Allin, 35 Ill. App. 336.....	37
Morse v. Richmond, 91 Ill. 303.....	115
People v. Brander, 244 Ill. 26.....	116
Walker v. Wood, 69 Ill. App. 542.....	37

CASES PREVIOUSLY RELIED ON.

Fougner v. First Nat. Bank, 141 Ill. 24.....	85
People v. Rose, 219 Ill. 446.....	85
Pettis v. Atkins, 60 Ill. 454	85
Robbins v. English, 24 Ill. 387.....	84



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OCTOBER TERM, 1923.

No. 59.

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, ET AL.,
Petitioners,

vs.

HENRY VETTE, ET AL.,
Respondents.

BRIEF AND ARGUMENT FOR RESPONDENTS,
VETTE, ZUNCKER, REGENSTEINER, CLEMENT
STUDEBAKER, JR., AND GEORGE M. STUDE-
BAKER.

(Italics ours.)
STATEMENT OF FACTS.

We feel that a more comprehensive statement of facts should be made than has been made in the brief filed on behalf of petitioners, hence the following:

Marcuse was originally a partner of the firm of Von Frantzius & Co., a brokerage firm (Rec., 420,* 421)

*All references are to the pages of the record printed by the Clerk of this court.

which suspended business because of the death of the senior partner sometime prior to 1917. (Rec., 421, 422.) Marcuse was desirous to form a new firm to conduct the stock brokerage business in the quarters of the former firm in Chicago. During the early part of 1917, while he was engaged in settling up the affairs of the former concern, he was represented by Sidney Stein, a practicing lawyer of Chicago, since deceased, as his attorney and counsel. (Rec., 452, 454, 504.) Mr. Stein was also representing Finn as his attorney and counsel, and had for many years been the friend and attorney of Finn. (Rec., 246, 261, 267, 331.)

Messrs. George M. Studebaker and Clement Studebaker, Jr., reside at South Bend, Indiana. (Rec., 671.) Studebaker Bros. Trust was represented in Chicago by Scott Brown. (Rec., 594.) George T. Buckingham, of the firm of Defrees, Buckingham & Eaton, was his legal adviser. (Rec., 550.) Vette and Zuncker are residents of Chicago, and their legal advisers were Col. Milton J. Foreman, and his then partner, Egbert Robertson. (Rec., 245, 538, 539, 613.) Theodore Regensteiner, a resident of Chicago, was represented by Louis Grollman, a Chicago lawyer. (Rec., 246, 617.)

ARRANGEMENT OF APRIL 2, 1917.

Marcuse and Stein, in their efforts to form such new concern, had conferences with Regensteiner, Vette, Zuncker and Brown. As a result of these conferences, on April 2, 1917, Marcuse, Morris, Hecht, Finn, Vette, Zuncker, Regensteiner and Hoffman (who was connected with the firm of Defrees, Buckingham & Eaton, Rec., 550), met at the office of Col. Milton J. Foreman (Rec., 227, 258, 259, 267, 539.) There a limited partnership document was signed by Marcuse, Morris, Hecht, Finn,

Vette, Zuncker, Regensteiner and Hoffman. (Rec., 226, 227, 228, 267).) These persons also signed a certificate of limited partnership. (Rec., 234, 235.) These documents provided for the formation of a partnership of which Marcuse and Morris were general partners, and the other six persons, special or limited partners. Each of them were to make certain contributions to the capital, and Hecht, Finn, Vette, Zuncker, Regensteiner and Hoffman, were to have no liabilities beyond their contributions. This proposed limited partnership was, in a general way, similar to, though in some important respects different from, that afterwards formed under Exhibit A. (Petitioners' Exhibit 1, Rec. 228.)

Of this April 2, 1917 document nine original copies were signed. (Pet. Ex. 1, Rec., 228, and Zuncker's Exs. 1 to 8, Rec., 269-318.) In most instances on the trial counsel in examining witnesses spoke of eight copies (Zuncker's Exs. 1 to 8) but Mr. Robertson's testimony makes it clear that there were nine (Rec., 635), and nine copies are in evidence. They were left in escrow with Col. Foreman (Rec., 455, 497, 539) and it was agreed by all that they were not to be delivered and that no certificate was to be filed and no money was to be paid by anyone until the occurrence of certain events which Col. Foreman insisted, and all others agreed, should be conditions precedent to the proposed agreement's becoming effective for any purpose. They are in evidence as Zuncker's Exs. 9 to 16 (Rec., 318-325, 269, 539, 636.)

ABANDONMENT OF ARRANGEMENT OF APRIL 2, 1917.

Shortly thereafter Marcuse went to New York. On his return he and Stein, his attorney, advised all parties that this proposed agreement could not become effective *and must be abandoned*. (Rec., 454, 498, 499, 500, 547,

549.) The reason was, as shown by a telegram, that the New York Stock Exchange "would not object to a firm having two special partners if they were not engaged in any other business and were otherwise passed on favorably" by the Stock Exchange Committee. (Rec., 262, 496.)

This then contemplated limited partnership would have had more than two special partners. (Pet. Ex. 1, Rec. 228.) Moreover, Hoffman (Rec., 636, 670), Vette, Zuncker, (Rec., 330, 384) and Regensteiner (Rec., 330) were actively engaged in other businesses and were, therefore, ineligible to become special partners.

Accordingly, none of the documents held by Col. Foreman were delivered, no certificate of partnership was filed, no money was paid in (Rec., 498, 535) and nothing further was done with reference to this uncompleted transaction. (Rec., 328, 498, 499, 575, 678, 685.)

Later Messrs. Stein and Robertson formally canceled all of these documents while still held in the escrow custody of Col. Foreman, by tearing off part of the signatures. (Rec., 619, 620, 634, 635.)

These letters setting forth the terms of the escrow were likewise canceled by Messrs. Stein and Robertson, by tearing off the signatures. (Rec., 619, 620.) (Though unimportant, it was shown that one of the conditions precedent never occurred until some time after the cancellation just related, viz.: the arrangements for the delivery to Ben Marcuse, as trustee, of all of the Von Frantzius estate, with the consent and approval of the Probate Court, was not concluded until August 1, 1917.) (Rec., 487, 498.)

CHANGE OF ATTITUDE.

Some weeks after this proposed agreement had been abandoned Messrs. Marcuse and Stein called on Brown and his counsel, Buckingham. From them was solicited Studebaker financial aid in a new entity which Marcuse desired to form, following the abandonment of the one just referred to. Marcuse and Stein were then endeavoring to organize a firm with two special partners and they wished Hoffman or some one else representing Studebaker interests to be one of such special partners, having and interest of \$100,000. (Rec., 552, 553, 637.)

They were told by Buckingham that neither Hoffman nor anyone representing Studebaker interests would become a limited partner in the proposed enterprise (Rec., 552, 553, 637, 638); that Buckingham (who was not present when the first arrangement was attempted, Rec., 550) was strongly opposed to his clients' becoming limited partners (Rec., 553, 637); that such relation, in his judgment, involved too much risk. They were told that if any money was furnished it would be by Studebaker Bros. Trust (Rec., 553, 637, 638) and that it, being a trust fund, must have some sort of a negotiable certificate (Rec., 553, 637, 638) issued by a trustee, representing the money contributed (Rec., 553), which it could hold as an investment (Rec., 638), or could transfer and sell; that such certificate must represent an interest only in profits and income after they had been separated and segregated from the partnership activities, and that only on that basis would any money be invested, and in that event, only \$50,000, and not \$100,000. (Rec., 553, 599, 637.) Marcuse and Stein did not then agree to this. (Rec., 553.) Later Buckingham was informed that Hecht and Finn would become special partners with Marcuse and Morris, and Stein drew up and submitted to Buck-

ingham a draft of a trust agreement. Stein went to Foreman and Robertson and informed them that this trust plan was the only one which Buckingham would consider, and that no Studebaker money could be enlisted on any other basis. (Rec., 621.)

Zuncker refused to have anything to do with it as a partner (Rec., 393) and he represented Vette also (Rec., 547, 619).

HECHT-FINN TRUST AGREEMENT.

Later, Stein presented to Buckingham and Robertson, separately, a typed draft instrument designed by him to effectuate the trustee certificate plan, under which Hecht and Finn were to act as trustees, and to issue trust certificates. (Rec., 554, 614, 615.) The draft instrument then submitted by Stein is Zuncker's Exhibit 36. (Rec., 554, 638.)

Buckingham objected to this draft (Rec., 554) because it did not provide for the intervention of a corporate trustee for the distribution of the funds, and because he desired it more sharply defined that the interest of the certificate holders was only in profits and proceeds *after* they were segregated from the partnership. (Rec., 563, 564.) Accordingly, and to meet these objections, Stein presented to them a second draft. (Rec., 554, 559, 563.) This draft is Zuncker's Exhibit 37. (Rec., 559, 638.) It came nearer meeting the objections made to the former draft (Rec., 563, 564), but was still unsatisfactory to Buckingham and Robertson for the same reasons (Rec., 563, 564, 614, 615.)

Thereupon Buckingham and Hoffman proceeded to formulate a document which would more nearly express their views. (Rec., 638, 639.) When it had been drafted Hoffman, Robertson and Stein went over it together.

(Rec., 615, 616, 638, 639.) Robertson made certain interlineations in it. (Rec., 615, 622, 623, 638.) This draft is Zuncker's Exhibit 38. (Rec., 565, 638.) This final draft was delivered to Stein, who caused it to be typed and it became the executed document known as the Hecht-Finn trust agreement (and referred to herein as "Exhibit B"). (Rec., 615, 616, 639.) Louis Grollman, attorney for Regensteiner, went over the document, and it was satisfactory to him. (Rec., 617.)

In the draft finally revised and agreed upon by Buckingham, Hoffman, Robertson and Stein, and approved by Grollman, Section 6 appears for the first time, viz.:

"The holders of Trust Certificates shall have no right, title or interest, directory, proprietary or otherwise, in the said copartnership or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto, both legal and equitable, being vested in the Trustees, nor shall the holders of Trust Certificates by the acceptance thereof be construed to have assumed any liability whatsoever with respect to said trust or said copartnership, but the interest of each and every holder of Trust Certificates shall consist solely of the right to receive from the trust company his proportionate share of the net part or parts of the Trust Fund from time to time actually received by the Trust Company, including the proportionate share of such holder of the corpus of said fund upon the dissolution of said copartnership, and such right shall be, and be taken to be, personal property and may be assigned and transferred as such subject to the limitations herein and in said Trust Certificates set forth and contained." (Rec., 568, 569.)

This final revision was made on Friday, June 29, 1917. (Rec., 616.)

SELECTION OF HECHT AND FINN.

Neither Vette, Zuncker, Regensteiner, Hoffman nor the Studebakers, nor any one representing any of them, ever solicited Hecht or Finn to become a special partner, or had anything whatever to do with inducing them to become such. (Rec., 256, 267, 327, 328, 331, 465.)

On the contrary, it appeared by the testimony of Finn, that Sidney Stein and Elias Mayer, a partner of Stein, and also Marcuse, persuaded him to become a limited partner (Rec., 256, 267, 328, 331) and from the testimony of Marcuse, that he (Marcuse), by personal selection, induced both Hecht and Finn to become special partners. (Rec., 460, 465, 500.)

EXECUTION OF THE DEFINITIVE AGREEMENTS, EXHIBITS A AND B.

On Saturday, June 30, 1917, Hoffman took to the office of Marcuse the check of Studebaker Bros. Trust for \$50,000, payable to himself. (Rec., 250, 639, 640.) Robertson took there the checks of Vette and Zuncker, payable to Hecht and Finn (Rec., 248, 249, 617, 618, 619); Grollman took there, on behalf of Regensteiner, the check of Regensteiner Colortype Co., also payable to Hecht and Finn. (Rec., 341, 647.) Robertson and Hoffman examined the contract of limited partnership, *Exhibit A*,* (Herein referred to as "Exhibit A") which Stein produced, and also examined *Exhibit B** and compared it with their final draft, Zuncker's *Exhibit 38* (Rec., 618, 640), after which Marcuse, Morris, Hecht and Finn executed the articles of limited partnership, *Exhibit A*, also referred to as Petitioner's *Exhibit 3* (Rec.,

*A copy of the limited partnership agreement, *Exhibit A*, is set forth in the appendix to this brief, p. i, and a copy of the Hecht-Finn Trust Agreement, *Exhibit B*, appears in the appendix, p. xii. These documents are referred to throughout this brief as Exhibits A and B, respectively.

238, 239, 20, 490), and a limited partnership certificate (Rec., 239, 490.) Hecht and Finn and a representative of Chicago Title and Trust Co. executed the trust agreement, Exhibit B, also referred to as Petitioner's Exhibit 6 (Rec., 243, 244, 26, 490, 618, 640), and the checks of Vette, Zuncker, Regensteiner Colortype Co., and Studebaker Bros. Trust were all delivered to Hecht and Finn, the latter check duly endorsed by Hoffman to the order of Hecht and Finn. (Rec., 489, 617-619, 647, 648, 673.)

None of these respondents were present (Rec., 639, 647), and none of them met or conferred with Hecht or Finn concerning the transaction, which was consummated. The latter were acting upon the advice of their own counsel, as was also Marcuse. (Rec., 328, 329, 331, 465, 499, 500.)

Of the certificates issued under the Hecht-Finn Trust Agreement, the one issued to Regensteiner for 57 shares was immediately surrendered, and two certificates were issued in lieu thereof, one to Regensteiner for 37 shares, and one to Grollman for 20 shares. (Rec., 337, 605-608.) The certificate issued to Hoffman for 100 shares was by him assigned to Gardner, an official of the Chicago Title & Trust Company (Rec., 610, 640), and a new certificate was issued to Gardner, who endorsed it in blank and delivered it to Chicago Title and Trust Company, which has since held it as a part of the securities owned by Studebaker Bros. Trust. (Rec., 610-612.)

STUDEBAKER BROS. TRUST.

Studebaker Bros. Trust is an investment fund, the legal and equitable title to which is held under deed of trust by Chicago Title & Trust Company, trustee, for the ultimate benefit of various persons, including, among

others, Clement Studebaker, Jr., and George M. Studebaker. This trust instrument is in evidence as Hecht's Exhibit 1 (Rec., 576). This trust was created long before the creation of Marcuse & Company and without reference to that firm.

FILING OF LIMITED PARTNERSHIP CERTIFICATE.

Under the Limited Partnership Act of 1874 in force June 30, 1917, the limited partnership certificate executed by Hecht and Finn was required to be filed with the County Clerk of Cook County, Illinois. Mr. Sidney Stein (attorney for Marcuse), who prepared the limited partnership agreement (Exhibit A) and this limited partnership certificate, undertook to file this certificate. The county clerk's office closed before the certificate could be filed (Saturday afternoon being a half holiday) and, therefore, he did not file the certificate until the following Monday, July 2nd. (Rec., 241-243, 337.)

The certificate was in accordance with the provisions of the Limited Partnership Act in force in Illinois on June 30, 1917. In this certificate Hecht and Finn were named as limited partners and the amount of their contributions as \$95,000 each. (Rec., 242.)

CONTRIBUTIONS OF HECHT AND FINN.

By the terms of Exhibit A, Hecht and Finn obligated themselves to contribute, as special partners, to the firm of Marcuse & Co. the sum of \$190,000, or \$95,000 each. (Rec., 21.) After the checks of Vette, Zuncker, Regensteiner Colortype Co. and Studebaker Bros. Trust were delivered to them, Hecht and Finn made their contribution to the capital of Marcuse & Co., by endorsing said checks to the order of Marcuse & Co., and delivering them, together with their own checks, payable to Marcuse & Co., for the balance of said \$190,000 to Ben

Marcuse, general partner. (Rec., 246-251, 341.) Instead of depositing the checks payable to them, and drawing their own checks for the full amount of \$190,000, which they might well have done, they endorsed and turned over to Marcuse & Co. the checks they had received as trustees. The partnership began to do business on Monday, July 2, 1917. (Rec., 365.)

HECHT AND FINN HELD OUT AS LIMITED PARTNERS ONLY.

Hecht and Finn were named as limited partners in the limited partnership certificate filed and on the firm stationery and on the firm business cards. (Rec., 523, 528, 348.) *They were held out to the world as limited partners. No one considered them as anything else. They did not assume to be anything else. Vette, Zuncker, Regensteiner, Hoffman and the two Studebakers did not appear in connection with the firm. No creditor of Marcuse & Co. traded with that firm, on account of the credit of any of these people, or had any knowledge of the source of the money which Hecht and Finn contributed to the capital of the firm.*

DIVIDEND PAYMENTS.

The dividends paid upon the limited partnership capital in the firm were paid to Chicago Title & Trust Company, trustee for that purpose, under the Hecht-Finn trust agreement, and were thus segregated from the assets of the firm and by that company distributed among the then certificate holders in accordance with the terms of the Hecht-Finn trust agreement (Rec., 244, 28) in every case but one. (Rec., 528-530.) A four per cent dividend was declared in January, 1918. Vette and Zuncker were then customers of Marcuse & Co. and had

trading accounts with that firm. Instead of paying the amount of this dividend on the \$190,000 to Chicago Title & Trust Company (as Marcuse & Co. should have done), Marcuse apportioned this according to the amounts of the then outstanding certificates and credited the amount apportioned to the Zuncker certificate to Zuncker's trading account and the amount apportioned to the Vette certificate to Vette's trading account. (Rec., 521.) There is nothing in the record to indicate that either Vette or Zuncker knew, at that time, that this had been done. Zuncker had no recollection of it. (Rec., 407, 408.) The amounts apportioned to the Finn certificate, the Regensteiner certificate and the Israel Grollman certificate were sent to each of them by the checks of Marcuse & Co. (Rec., 519, 521.) For the amount due on the certificate held by Studebaker Bros. Trust, Marcuse sent a check to Scott Brown, who is the manager of that trust. Brown refused to receive this check and returned it to Marcuse & Co. because the money should have been paid to Chicago Title & Trust Company as trustee under the Hecht-Finn Trust. (Rec., 529, 530.) Marcuse then, instead of making out a check payable to Chicago Title & Trust Company, made out another check to Frank G. Gardner, the official of the Chicago Title & Trust Company (Rec., 530), to whom a trust certificate was issued upon a surrender and cancellation of the Hoffman certificate as above explained (Rec., 611, 612). Gardner endorsed this check and turned it over to Chicago Title & Trust Company and that company put it through the bank (Rec., 532), rather than returning it to Marcuse & Co. and insisting that another one be made out to Chicago Title & Trust Company. Marcuse, when asked to explain why the attempt was made to handle this dividend in the manner as here explained, said that Hecht had sug-

gested that it might save the expense of paying an extra commission to Chicago Title & Trust Company and said that Marcuse & Co. sent these checks out direct, but notified the Chicago Title & Trust Company that they had done so. (Rec., 529.) This was the only dividend he ever attempted to handle in that way. (Rec., 530.)

NO CONFLICT OF EVIDENCE.

There is no conflict of evidence as to any material fact. The facts were proven without controversy as to their truth, but only as to their materiality or relevancy.

THE ILLINOIS LIMITED PARTNERSHIP ACT OF 1917.

The business continued until March 11, 1920, when a petition in bankruptcy was filed in the United States District Court at Chicago. (Rec., 33-35.)

On June 28, 1917, the Illinois legislature passed a new General Partnership Statute and a new Limited Partnership Statute, being the "Uniform Acts" originating with the American Bar Association, and the committee on Uniform State Legislation. These acts became effective on July 1, 1917, which was Sunday. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a. Cahill's Ill. Rev. Stat. 1921, Ch. 106½, Smith's Ill. Rev. Stat. 1921, Ch. 106a.) Thus the old statute was in force on Saturday when the limited partnership contract, and the Hecht-Finn Trust Agreement were executed. If the limited partnership certificate had been filed with the clerk of the County of Cook that day the limited partnership would have become effective, but on the following Monday (July 2nd) when the certificate was filed, the old Limited Partnership Act had been superseded by the new Limited Partnership Act. By the terms of the old

Illinois Limited Partnership Act, a limited partnership could be formed to carry on a brokerage business. A limited partnership would become effective when and if, and only when and if, the certificate thereof was filed with the county clerk. (Hurd's Rev. Stat. of Ill. 1915-1916, Ch. 84, Secs. 6, 8.*) The new Limited Partnership Act, of 1917, which superseded the older one, over Sunday, did not provide for limited partnerships to carry on a brokerage business.

PLEADINGS.

The original petition in bankruptcy was filed on March 11, 1920, against Marcuse, Morris, Hecht and Finn, as copartners doing business as Marcuse & Co. (Rec., 33.)

One Lachman filed an intervening petition against Marcuse, Morris, Hecht and Finn, in which he set forth the situation with reference to the new Limited Partnership Act's superseding the old act and that the certificate thereof had not been filed until after the new act became effective and claimed that Marcuse, Morris, Hecht and Finn were, therefore, all liable as general partners. But no reference was made to any one else. (Rec., 42.)

Until the present litigation was started neither Hecht nor Finn nor any of these respondents knew that the limited partnership certificate had not been filed until Monday, July 2, 1917, nor were they aware of the legal effect of that fact until the commencement of this litigation. (Rec., 264, 265, 654.) Upon being advised of this claim by counsel, Hecht and Finn promptly tendered to the bankruptcy receiver, \$46,000, be-

*These sections of the statute are set forth in Petitioner's Brief, p. 4.

ing an amount larger than the profits which had been paid out to them by the partnership, with interest (Rec., 654, 655), together with a document of renunciation of all profits and benefits in compliance with Section 11 of the Uniform Limited Partnership Act of Illinois. (Rec., 654, 58, 59.) Later this money was paid to the clerk of the District Court. (Rec., 70.)

Section 11 of the Uniform Limited Partnership Act is as follows:

“A person who has contributed to the capital of a business conducted by a person or partnership *erroneously believing* that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.” (Hurd’s Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 55. Smith’s Ill. Rev. Stat. 1921, Ch. 106½, Sec. 54, Cahill’s Ill. Rev. Stat. 1921, Ch. 106a, Sec. 55.)

In the answer of Hecht and Finn to the original and intervening petitions (Rec. 56, 59, 60, 62, 71, 78, 85, 91) they set forth, among other things, in substance the provisions of Section 11 of the new Limited Partnership Act and the tender and renunciation, etc., which they had made upon learning of this situation, and that at no time had either of them participated in the management, control, operation or conduct of the business of said copartnership or taken any action in excess of action rightfully permitted to a limited partner in a limited partnership, etc.

On April 30, 1920, Fiegel, one of the original petitioning creditors, and Jacobs and Frazee, intervening peti-

tioning creditors, filed an amended petition (Rec. 184) the parties defendant to which were:

- (a) Marcuse and Morris;
- (b) Hecht and Finn;
- (c) Vette, Zuncker, Regensteiner, Hoffman, Clement Studebaker, Jr., and George M. Studebaker.

This amended petition alleged merely that Marcuse, Morris, Finn, Hecht, Regensteiner, Vette, Zuncker, Hoffman, Clement Studebaker, Jr., and George M. Studebaker, doing business under the trade name of Marcuse & Co. had their principal place of business in Chicago and were engaged in buying and selling stocks and other securities; that the petitioning creditors had provable claims against them, etc., and that each of them individually and as copartners were insolvent and had committed acts of bankruptcy and praying that they be individually and as copartners as Marcuse & Co. adjudged to be bankrupt.

Vette, Zuncker, Regensteiner, Hoffman, George M. Studebaker, and Clement Studebaker, Jr. (now for the first time brought into the case by petitioning creditors) filed their separate answers to the amended petition (Rec., 189, 195, 201, 205, 210, 215) setting forth the facts with reference to the organization of the firm, the Hecht-Finn Trust, the purchase of certificates, etc., and denying that they were members of the firm of Marcuse & Co. either limited or general, or liable for the debts of that firm.

EVIDENCE IMPROPERLY ADMITTED.

On the hearing the petitioning creditors, over the objections of these respondents, that the question whether these respondents are partners in the firm of Marcuse

& Co., and liable for the debts of that firm, *must be determined from the Limited Partnership Agreement, Exhibit A, and the Trust Agreement, Exhibit B*, and that all evidence relating to conversations and transactions prior to the execution of these instruments was inadmissible (Rec., 227, 228, 256, 257, 373, 374, 378, 381, 382, 390, 396, 453, 538), introduced evidence as to the various conversations, incidents, transactions and negotiations occurring prior to June 30, 1917, as above set forth. The court admitted the evidence over these objections, and later refused to strike it from the record. (Rec., 538.) These respondents (not conceding the admissibility of such evidence, but adjusting themselves to the theory upon which the court proceeded with the hearing) introduced other evidence as to matters and things occurring prior to June 30, 1917. (Rec., 381, 571, 572.)

ORDER OF THE DISTRICT COURT.

On this state of the record Landis, J., by an order entered July 1, 1920 (Rec., 222), found that the firm of Marcuse & Co. was composed of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette, and Peter M. Zuncker and referred the cause to a referee for a hearing on the assets and liabilities up to March 11, 1920, when the original petition in bankruptcy was filed. Hoffman was not included in this order. The court thus held that all of these parties were general partners and directed an inquiry to determine whether the firm of Marcuse & Co. and all of these individuals as general partners was or was not insolvent.

DECISION OF CIRCUIT COURT OF APPEALS.

A petition to review and revise was filed to procure a review of this order and the Circuit Court of Appeals held originally and afterward on elaborate application for a rehearing:

(1) That Hecht and Finn in good faith believed themselves to be limited partners in a limited partnership.

(2) That this being the case their complete compliance with Section 11 of the new Uniform Limited Partnership Act exempted them from liability.

(3) That even if this were not so the Uniform General Partnership Act prevented their liability as general or any kind of partners.

(4) That Hecht and Finn not being liable as general partners, of course, the other respondents whose only relation was to Hecht and Finn could not be held either as general or limited partners or as any partners.

Having reached this conclusion the Court of Appeals found it unnecessary to pass on the further contentions set up by the other respondents. These undisposed of defenses of Vette, Zuncker, Regensteiner and the two Studebakers were:

(1) That respondents Vette, Zuncker and Regensteiner were *cestuis qui trust* under the Hecht-Finn Trust Agreement and never became partners either general or limited and that the Studebakers were not even certificate holders.

(2) That even if Hecht and Finn were held to be general partners with Marcuse and Morris, yet these respondents, if partners at all, could be nothing more than subpartners of Hecht and Finn and that as such subpartners they would not be members of the firm of Marcuse

& Co. and would not be liable to the creditors of that firm for its debts.

In addition to these defenses the Messrs. Studebaker contended that even if their preceding mentioned defenses were inadequate, they were not liable because they had not even purchased a trust certificate; that the money with which said certificate was purchased was the property of Studebaker Bros. Trust, a fund the legal title to which was in a trustee and that if the purchase from Hecht and Finn of a trust certificate operated to make the purchaser a general partner in Marcuse & Co. such purchaser was the trustee and the trust fund (which, operating through Scott Brown, its manager, had bought the certificate) and not the Studebakers as individuals.

None of these additional defenses of Vette, Zuncker, Regensteiner or the Studebakers became necessary to be passed on by the Court of Appeals.

BRIEF.

POINTS AND AUTHORITIES.

The writ of certiorari was improvidently issued and should be dismissed.

Layne & Bowler Corporation v. Western Wells Works (April 9, 1923), 67 L. Ed. (U. S.), 497.

I.

Hecht and Finn are not in law general partners of Marcuse & Co. and liable as such to its creditors, and therefore, irrespective of all other questions, these respondents cannot be held on any theory to be partners of Marcuse & Co.

(A) Because there has been a full compliance with Section 11 of the Uniform Limited Partnership Act of Illinois.

Section 11, Limited Partnership Act; Hurd's Revised Stat. of Ill. 1921, Chap. 106a, Sec. 55; Smith's Ill. Rev. Stat. 1921, Ch. 106½, Sec. 54; Cahill's Ill. Rev. Stat. 1921, Chap. 106a, Sec. 55.

Commercial National Bank & Trust Co. 239 U. S. 520, 526, 528, 529.

Explanatory note to Uniform Limited Partnership Act, William Draper Lewis, draftsman, appendix to this brief, p. xxiii.

Uniform Limited Partnership Act, by William Draper Lewis, Vol. 65 Pa. Law Review, 715; appendix to this brief, p. xxvii.

The Nature of Limited Liability under the uniform Limited Partnership Act, University of Pennsylvania Law Review, Jan. 1923, Vol. 71, page 150; appendix to this brief, p. lii.

(B) Because under the provisions of the Uniform General Partnership Act of Illinois, neither Hecht and Finn nor these respondents can be held liable as general partners. This is true irrespective of Section 11 of the Limited Partnership Act.

Sections 4 (1), 6, 7, Illinois General Partnership Statute; Smith's Illinois Revised Statutes, 1921, Secs. 4, 6, 7, Ch. 106½, p. 1461.

It is a cardinal principle of law that persons are not partners unless they *intend* to be such. Every partnership rests on the mutual consent of the members.

Ruling Case Law, Vol. 20, p. 831.

Phillips v. Phillips, 49 Ill. 437, 439.

Bushnell v. Consolidated Ice Machinery Co. 138

Ill. 67, 74, 75.

Grinton v. Strong, 148 Ill. 587, 596.

Reed v. Engle, 237 Ill. 628, 631.

Goacher v. Bates, 280 Ill. 372, 376.

London Assurance Co. v. Drennen et al. 116

U. S. 461, 472.

II.

Even if Hecht and Finn are liable as partners (which is denied) these respondents are not so liable because:

A. Under the written and signed instrument, Exhibit B, Hecht and Finn are trustees and the certificate holders thereunder are *cestuis que trust*. Under the terms of that instrument no partnership relation is created between Hecht and Finn and these respondents.

Crehan v. Megargel, 192 N. Y. S. 290; 234 N. Y. 67; 136 N. E. 296.

Williams v. Milton, 215 Mass. 1, 10, 11; 102 N. E. 355, 358, 359.

Crocker v. Malley (1919), 249 U. S. 223, 232, 233.
Mayo v. Moritz, 151 Mass. 481; 24 N. E. 1083.

Johnson v. Lewis, 6 Fed. 27, 28.

Wells-Stone Mercantile Co. v. Grover, 75 N. W. (N. Dak.), 911, 916.

Jones v. Gould, 209 N. Y. 419, 424.

Home Lumber Co. v. Hopkins (1920), 190 Pac. (Kans.), 601, 604.

R. I. Hospital Trust Co. v. Copeland, 98 Atl. (R. I.), 273, 279.

Additional authorities cited in this brief, pp.
~~75-77, 94-97, 100, 101~~

B. If the certificate holders, by the terms of Exhibit B, are *partners* with Hecht and Finn (which is denied), such partnership is among and between themselves alone, and is therefore in law a *subpartnership*; and as *subpartners* they are not partners of the firm of Marcuse & Co. or liable to its creditors.

Burnett v. Snyder, 76 N. Y. 344.

Burnett v. Snyder, 81 N. Y. 550; 37 Am. Rep. 527, 531.

Bybee v. Hawkett (C. C. A. 6), 12 Fed. 649.

Bank v. Morris, 43 Legal Intelligence (Pa.), 56.

Rockafellow v. Miller, 107 N. Y. 507.

O'Connor v. Sherley, 107 Ky. 70; 52 S. W. 1056.

Setzer v. Beale, 19 W. Va. 274, 287, 288.

Meyer v. Krohn, 114 Ill. 574, 581.

Crehan v. Megargel, 192 N. Y. S. 290.

Bates, Law of Partnership, p. 169.

Cyc. of Law and Procedure, Vol. 30, p. 382.

Ruling Case Law, Vol. 20, p. 1074.

C. The Studebakers were not even certificate holders under Exhibit B. They had no connection with the firm of Marcuse & Co. and cannot be held liable as partners in that firm on any theory.

ARGUMENT.

WRIT OF CERTIORARI IMPROVIDENTLY ISSUED AND SHOULD
BE DISMISSED.

On the application for the issuance of the writ of certiorari we urged that the application should be denied.

We pointed out to the court that:

(a) There is no question of public importance involved in this case.

(b) The case does not involve a Federal question in any sense.

(c) The fact that there was a dissenting opinion in the Court of Appeals was no basis for the allowance of the writ.

(d) There is no conflict of opinion between Circuit Courts of Appeals or between any Circuit Court of Appeals and a state court.

(e) The amount involved is no ground for certiorari.

(f) No question of uniformity arises.

The decision of the Court of Appeals turned on the provisions of the Limited Partnership Act and General Partnership Act. No other Court of Appeals has thus far passed upon these questions.

The fact that this case involves among other things an application of provisions of the so-called Uniform Limited Partnership Act and Uniform General Partnership Act is no ground for this court reviewing this case. So-called uniform statutes exist on many subjects, and, while uniformity of decision is of course desirable, if this court were to take upon itself the burden of re-

viewing cases simply because they involved the application of some of these statutes, an enormous volume of litigation would find its way upon the court's docket which otherwise would not be there.

No question of interest to the public is involved in this case any more than in any other case where a large amount of money or where the application of some uniform statute is involved.

There is no Federal question in the case. It is primarily a question of contract relationship and involving the application of state statutes. In a word, it is a case of private contract rights and state statutes.

Since the writ of certiorari issued in this case, this court rendered its opinion in

Layne & Bowler, Corporation, v. Western Wells Works, decided on April 9, 1923, 67 L. Ed. (U. S.) 497.

In the Layne case the court issued the writ. It was an ordinary patent case. The writ was issued with the thought that there was a conflict between two of the Circuit Courts of Appeals. Upon a consideration of the case this was found to be a misapprehension and in an opinion written by Mr. Chief Justice Taft, the writ was dismissed as having been improvidently issued, and this court said (p. 499):

“If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari *except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit*

Courts of Appeal. The present case certainly comes under neither head."

And the court cited and we here cite:

Furness W. & Co. v. Yang-Tsze Ins. Ass'n, 242
U. S. 430, 61 L. Ed. 409, 37 Sup. Ct. Rep. 141.
United States v. Rimer, 220 U. S. 547, 55 L. Ed.
578, 31 Sup. Ct. Rep. 596.

These were cases in which the court issued the writ and later upon further consideration dismissed the writ.

This court has refused to issue a writ of certiorari in a great many cases in which there was a dissenting opinion in the Circuit Court of Appeals. (See pp. 16, 17 of our brief in opposition to the application for the writ.)

We respectfully urge that the writ issued in this case should be dismissed.

THE ISSUES.

The opinion of the Circuit Court of Appeals begins as follows:

"The primary issue is (1) whether, under above stated facts, *petitioners* are liable as general partners with Marcuse and Morris. (2) Then there is the question whether, in case Hecht and Finn are so liable, the liability can be extended also to the other petitioners, who do not by the finally executed contract purport to have entered into any partnership arrangement of any sort, and (3) the further question whether the Studebakers can in any event be held general partners, in view of the fact that the Studebaker contribution was made by and for 'Studebaker Bros. Trust.'" (Numerals ours.) (Rec., 739.)

We accordingly proceed to discuss these questions in the order considered by the court:

I.

NEITHER HECHT AND FINN NOR THESE RESPONDENTS WERE GENERAL PARTNERS OF MARCUSE & CO.

A.

UNDER SECTION 11 OF THE UNIFORM LIMITED PARTNERSHIP ACT HECHT AND FINN ARE NOT LIABLE AS GENERAL PARTNERS OF MARCUSE & CO., AND, THEREFORE, THESE RESPONDENTS ARE NOT LIABLE.

As well stated by the court, the primary question presented by this record is whether or not respondents are liable to bankruptcy creditors because they are general partners of the firm of Marcuse & Co.

The contention that they were general partners and therefore so liable, rests upon the single fact that Stein, attorney for Marcuse, failed to file the certificate of limited partnership on Saturday afternoon, June 30th, but filed it on Monday, July 2, 1917.

If the county office had been open on Saturday afternoon, June 30th, Stein would have filed the certificate and Hecht and Finn would have been limited partners by virtue of those articles, and not general partners.

Because Stein filed the certificate on Monday morning, July 2nd, *after* the 1874 Act was repealed, petitioners claim that Hecht and Finn became general partners, and that the other respondents also thereby became general partners and therefore liable as such.

We contend and the Court of Appeals held, that Hecht and Finn were not general partners of Marcuse & Co., and are not liable to its creditors, and that, therefore, all other questions of law and of fact are inconsequential, for no one can seriously contend that the

other respondents are liable for the debts of Marcuse & Co. if Hecht and Finn are not liable. Hecht and Finn might be held liable and the other respondents not liable, but the converse of this could not be true.

The Limited Partnership Agreement was executed by Marcuse, Morris, Hecht and Finn (and by them only) on June 30, 1917.

On that day the Act of 1874 was in force. That act provided that a limited partnership might be formed for the purpose of carrying on any business, and that the liability of any partner might be limited by such agreement, and that such limited partner would be liable to the creditors of the firm to the extent only of his contribution to the capital of the firm.*

It also provided that a certificate of limited partnership should be filed of record in the county.*

It also provided that the limited partnership agreement *could become effective* only at the time when the certificate and affidavit were filed.*

The Limited Partnership Agreement and certificate were executed and acknowledged and the bank checks were delivered by Hecht and Finn to Marcuse on June 30, 1917, which was Saturday.

As of date July 1, 1917, the 1874 act was repealed. Petitioning creditors claimed that, *therefore*, the agreement, limiting the liability of Hecht and Finn, *never became effective under the 1874 act*.

It was claimed by petitioning creditors, and conceded by all, that the limited partnership contract never became effective as such within the terms or within the life of the 1874 act. The final and vital element in that attempt did not take place until after that statute had been

*These sections of the statute (Secs. 2, 4, 6, 8) are quoted in petitioner's brief, p. 4.

repealed. The firm began business on July 2, 1917. *All its dealings were on and after that date.*

The 1874 act was repealed by a specific provision in the so-called "Uniform Limited Partnership Act," which became effective as an Illinois statute on July 1, 1917.

This new act provided a wholly new scheme for limited partnerships, and was in force on July 1, 1917, and afterward. Section 11 of the Uniform Limited Partnership Act is as follows:

"A person who has contributed to the capital of a business conducted by a person or partnership *erroneously believing* that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income." (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 55.)

Hecht and Finn together had contributed \$190,000 to the going business which, beginning on July 2, 1917, was conducted as Marcuse & Co. There can be no doubt that they "believed" that they were "limited partners in a limited partnership." The certificate filed with the county clerk so recited, and this gave public notice (Rec., 241-243) as did also the notices which they caused to be published (Rec., 525). They so held themselves out to the public, and to the customers of that firm, on letterheads, cards and otherwise (Rec., 348, 528), so that everybody clearly understood what they supposed, and what all supposed, their status in that firm to be. No one has claimed otherwise. They did not attempt to exercise any of the rights of general partners.

COMPLIANCE WITH SECTION 11.

Accordingly, when they discovered their defective status as limited partners, they promptly tendered to the receiver of the bankrupt firm \$46,000 in cash, which was an amount fully sufficient to cover all of the money which the firm had paid to them *as profits due to them as special partners, plus interest on the same*, and plus a margin for safety, together with a formal renunciation of all profits, rights and claims in the partnership or its property (Rec., 654, 655, 58, 59), and later paid this money to the clerk of the District Court (Rec., 70).

APPLICATION OF SECTION 11.

The language of Section 11 clearly covers this case. Hecht and Finn had contributed to the capital of the business conducted by the firm of Marcuse & Co., and they erroneously—although sincerely—believed that they were limited partners in a limited partnership. When they discovered that their belief was erroneous, they adopted the statutory means of preventing themselves from becoming general partners if indeed they did not go further than Section 11 requires.

The language of Section 11 is clear and plain, and is not susceptible of being misconstrued. However, in reinforcement of the plain language, we now bring to the court's attention the genesis, history, and purpose of the act of which Section 11 is a part.

HISTORY AND PURPOSE OF UNIFORM LIMITED PARTNERSHIP ACT.

The American Bar Association has a committee on uniform legislation. That body and its committee have, for many years, been engaged in an attempt to procure

the passage, by all states, of *uniform* statutes on specific subjects. Pursuant to that policy, it has procured in Illinois and elsewhere the passage of many *uniform* acts.

In line with its general campaign on this subject, it procured in various states the passage of a statute providing for a "Commission for the Uniformity of Legislation in the United States."

Pursuant thereto, the Illinois legislature, in 1907, passed an act creating a Commission on Uniform Legislation and prescribing its duties. (Hurd's Rev. Stat. of Ill. 1921, Ch. 131, Secs. 18, 19, p. 3152.) Under this act, commissioners were appointed to represent Illinois.

These commissioners met with similar commissioners representing all the states of the Union, composing "The National Conference of Commissioners on Uniform State Laws."

The twenty-sixth annual meeting of that body was held at Chicago, August 23-29, 1916.

That body then had a "Committee on Commercial Law," to which had been delegated the duty of preparing a "Uniform Limited Partnership Act."

At this 1916 meeting, this committee reported to the conference the text of the "Uniform Limited Partnership Act" (which afterward verbatim became the Illinois statute) with an "explanatory note" setting forth the objects and purposes of the proposed act. This "explanatory note" was signed by Prof. William Draper Lewis, Dean of the College of Law of the University of Pennsylvania, who was draftsman for the committee, and is set forth in the appendix to this brief, p. xxiii.

The draft of the proposed statute, printed and bound together with this "explanatory note," was formally approved by the conference, and it directed that the same

be submitted and recommended to the legislatures of the different states for enactment.

The National Conference, at the same session, also approved the report of the Committee on Commercial Law, which contains the following:

"The committee is of opinion that the act as drafted preserves all the commercial advantages of the present Limited Partnership Acts and does away with the very serious disadvantages which arise from regarding a person who has contributed to the capital of the partnership as a partner to be held unlimitedly liable for all partnership debts, unless he has strictly complied with the requirements of the statute."

Pursuant to the direction of the conference, the secretary of the Illinois Commissioners, caused the proposed statute and the "explanatory note" to be printed and bound together. In this form he placed them at the disposal of the members of the Illinois House and Senate.

The statute was accordingly enacted in the form recommended, and became effective on July 1, 1917, as the law of Illinois.

Just before and just after this, the same statute and the same explanatory note were similarly presented in many other states, and the statute accordingly adopted and enacted into law in the years 1917, 1918 and 1919, by Alaska, Pennsylvania, Maryland, Idaho, Minnesota, New Jersey, Tennessee, Utah, Virginia and Wisconsin. It is now similarly pending before the state legislatures in many other states.

THEORY OF UNIFORM LIMITED PARTNERSHIP ACT.

Because these statutes, to be useful, must be *uniform*, the many new statutes, proposed by the National Conference on various subjects, are invariably submitted to

legislatures in this form, with an "explanatory note" approved by the National Conference, so that from and after the enactment, each adopting state will have a local law *in text and in principle*, exactly like each other adopting state.

In 1918 Prof. William Draper Lewis, who prepared this act, published an article concerning the "Uniform Limited Partnership Act." This article appears in the *Pennsylvania Law Review*, Vol. 65, p. 715. It is published verbatim in the appendix to this brief, p. xxvii.

In the "explanatory note" it is succinctly pointed out, and in Dean Lewis' article it is more elaborately pointed out, that the vehicle known as the limited partnership, which had general partners who were liable for all debts, and limited partners whose liability was limited, was a legal device which was imported originally from the French law.

Under the French law, a limited partner did not, through inadvertence, become a general partner or have the liability of a general partner.

The first of these old statutes was adopted in New York, and the Illinois 1874 Act, and that of most other states, was practically a copy of the New York statute.

By the terms of some of these old statutes, and by the construction placed by New York and other courts upon them, there grew up in this country the rule of holding those to be general partners who attempted to be limited partners, but who failed, by reason of technicality, or inadvertence, to meet exactly the statutory requirements. The establishment of this rule destroyed the usefulness of the old limited partnership statutes, because business men generally deemed that form of association to be too dangerous, because of the great risk of limited partners being held general partners.

The report proceeds to point out that no sound public policy requires that one who attempts to be a limited partner, and who holds himself out *only* as such, and who does not deceive the public or creditors, should be held a general partner because of some technical defect, and that, therefore, one of the cardinal principles on which the new uniform act was builded was to depart absolutely from these old rules, and to establish a new *public policy* in the states which adopt the new act.

It was pointed out that, when the new statute became the law, one who had, in good faith, attempted to limit his liability, but had failed to do so should not be considered a general partner, and it was stated that Section 11 was specifically written into the new statute for the express purpose of remedying the existing evil, and bringing about the new condition.

It should be noted that this new public policy was expressed in the broadest terms to exempt from liability as general partners those who, in good faith, had attempted to become limited partners. The language of Section 11 (in conformity with the policy which it crystallized into law) *is not in any way limited*. The basis of its broad exemption is that of "erroneous belief," without limitation or reservation. The "erroneous belief" is not limited to error of law, or of fact. If the "belief" exists and is erroneous, the party can exempt himself by the statutory method. If he complies with that method, he will not be held to the liability of a general partner. This statute, even without its context and avowed intention, *covers this case completely*.

To make this more certain, the new statute contains Section 28, which reads in part:

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it." (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 72.)

UNIFORM ACT EXPRESSED A NEW PUBLIC POLICY.

The legislature of Illinois adopted this new public policy as the law of Illinois. It specifically repealed the existing statute *and, in effect, it overthrew the old rule, announced by the existing judicial decisions based on such previous statute.*

On July 2, 1917, in Illinois, the old statute had been specifically repealed, and a new public policy had been instituted in its place, and was then in effect. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 75, p. 2413.)

At this point attention may be directed to the fact that the *purpose* of this act was to make a new public policy, not for *one* state alone, but for *all* adopting states, embodying new fundamentals, concerning the liability of a limited partner, and to protect him from being held to be a general partner.

This public policy was not an outgrowth of Illinois law, or a change merely in Illinois policy, but was the deliberate adoption by Illinois, together with a number of sister states, of a *new and uniform* basic principle.

In every state where this statute was presented to the legislature, it was accompanied by the "explanatory note" of those who drafted it, showing the reasons for its enactment. This same practice as to an "explanatory note" is followed as to all "uniform statutes" on various subjects, which are presented by the National Conference, and proposed by it to be written into the laws of the various states. A considerable number of these uniform statutes have been adopted in Illinois.

Obviously, this method of procuring the enactment of uniform laws gives such acts a wholly different character from the ordinary enactment of a local statute. It has been so recognized by this court.

Commercial National Bank of New Orleans v. Canal-Louisiana Bank & Trust Company, 239 U. S. 520, 526, 528, 529.

That case, which came to the court on appeal, involved the Uniform Negotiable Warehouse Receipts Act of Louisiana. This was one of the uniform acts which was procured by the National Conference to be enacted in many states. The construction of the act was sharply disputed, and the court, in construing the act, *quoted* (p. 526) *from the report of the commissioners, and adopted the reasoning and the language of that report.*

It was strongly urged in that case that the Louisiana court rulings, establishing rules of law for Louisiana, as they stood *before* the enactment of the uniform law, should be followed in the construction of the new act.

This court, however, refused to hold this, and pointed out that these *uniform statutes* were not based on local laws, but were, in effect, the adoption of *a new code of principles* applicable alike in all the states adopting the act. The court said (at pp. 528-9):

"It is said that under the law of Louisiana, as it stood prior to the enactment of the Uniform Warehouse Receipts Act, the Commercial Bank would not have taken title as against the Canal-Louisiana Bank. (*Stern Bros. v. Germania National Bank*, 34 La. Ann. 1119; *Lalande v. His Creditors*, 42 La. Ann. 705; *Holton v. Hubbard*, 49 La. Ann. 715; *Insurance Co. v. Kiger*, 103 U. S. 352; *but see Hardie v. Vicksburg S. & P. Ry. supra*, 118 La. 254); and it is urged that the new statute is but a step in the development of the law and that decisions under the former state statutes are safe guides to its construction. We do not find it necessary to review

these decisions. It is apparent that if these Uniform Acts are construed in the several states adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the Uniform Warehouse Receipts Act expressly provides (Sec. 57): 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficent object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the Uniform Act and that it should not be regarded merely as an offshoot of local law. The cardinal principle of the act—which has been adopted in many states—is to give effect, within the limits stated, to the mercantile view of documents of title. There had been statutes in some of the states dealing with such documents, but there still remained diversity of legal rights, under similar commercial transactions. *We think that the principle of the Uniform Act should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it; and, in this view, we deem it to be clear that in the circumstances disclosed the Commercial Bank took title to the warehouse receipts and to the cotton in question."*

In view of this high authority it seems settled that (1) in construing this act as one of the Uniform Acts, its *real purpose* supersedes and repeals existing local statutes, as well as existing court decisions which are in conflict with its real purpose; and that (2) in ascertaining such *real purpose* the explanatory report of those who drafted the statute is to have great, if not controlling, weight.

DECISIONS UNDER OLD ACTS HAVE NO APPLICATION.

The courts may not take from the decisions construing the old limited partnership acts a rule to be applied in determining rights and liabilities under the Uniform Act.

For this reason cases cited by the petitioners (*e. g.*, *Henkel v. Heyman*, 91 Ill. 96; *Manhattan Brass Co. v. Allin*, 35 Ill. App. 336; *Walker v. Wood*, 69 Ill. App. 542; *Buckley v. Lord*, 24 How. Pra. 455, etc.), have no application to this situation. These cases are apt examples of the very evil which the Uniform Act was designed to remedy.

The principle announced by this court in *Commercial National Bank of New Orleans v. Canal-Louisiana Bank and Trust Company* (*supra*), was recognized in a recent decision of the Supreme Court of Illinois in the case of *City Bank v. Bank of Republic*, 300 Ill. 103, which involved the construction of the Uniform Negotiable Instruments Act. The court said (pp. 106, 107):

"The law was enacted for the purpose of furnishing in itself a certain guide for the determination of all questions covered thereby relating to commercial paper, and so far as it speaks without ambiguity as to any such question reference to case law as it existed prior to the enactment is more likely to be misleading than beneficial. If the provisions of the act harmonize with the general principles of commercial law in force before its enactment, those principles should be followed. But if the language of the act conflicts with statutes or decisions in force before its enactment, the courts should not give the act a strained construction in order to make it harmonize with earlier statutes or decisions. If this is done the very purpose of the act is defeated; in order to keep the law as nearly as may be uniform the courts of all the states should keep in mind the spirit and object of the law and should give to the language of the act a natural and common construction, so that all might be more likely to come to the same conclusion."

CONTENTIONS OF PETITIONERS WITH RESPECT TO
SECTION 11.

Petitioners in denying the right of Hecht and Finn to rely upon Section 11 of the Uniform Limited Partnership Act contend:

1. That it applies solely to limited partnerships formed under said act.
2. That it is inoperative because Exhibit A contemplated a firm which was to engage in the brokerage business.

In urging these contentions petitioners have found it necessary to read into Section 11 language which the legislature did not use, and did not intend to use. The meaning of the section is clear and unmistakable. It matters not whether Marcuse & Co. was attempted to be organized under the Act of 1874, or under the Uniform Act of 1917. Section 11 was intended to, and does, afford protection to a person who has contributed capital to a firm and who honestly (though erroneously), *believed* that he became a limited partner in a limited partnership. It was not (as contended by petitioners) incorporated into the act for the benefit of persons who are actually members of a limited partnership organized under said act. Its application is not confined to those who have substantially complied with Sections 1 and 2 of the act. The whole act protects such persons. Such persons *are* limited partners and are liable only as such.

Section 11 covers attempts, and under any act—not those which have succeeded, but those which have failed. Section 11 protects a person who erroneously believes *what is not the fact, i. e.*, that he is a limited partner in a limited partnership. The *question* is, did Hecht and Finn contribute to the capital of Marcuse & Co., “*erroneously believing*” that they had become limited partners in a limited partnership?

The ground for relief as distinctly stated in the statute is the fact that the contribution has been made under an erroneous belief. The existence of the erroneous belief is the thing which brings Section 11 into operation. *If the erroneous belief exists, Section 11 applies.*

There is no justification for reading into the statute language which restricts and limits its operation, and which completely defeats its remedial purpose.

The whole theory and policy of the Uniform Limited Partnership Act differs from that of previously existing acts. Under those acts all persons seeking to form a limited partnership were regarded as general partners unless they had fully complied with the requirements of the statute. The theory of the uniform act is not that every failure to comply with the statute makes the parties general partners, or that all parties are in the first instance general partners; but that no person who has contributed to the capital of a firm and who erroneously believes that he is a limited partner in that firm shall be held liable as a general partner unless he learns the contrary and fails to promptly avail himself of the remedial provisions of the act. *Then, and not until then, does such person become liable as a general partner.* This is a fundamental conception which underlies the whole act.

There is no provision in the Act of 1874 against the conduct of a brokerage business by a limited partnership. Even though Hecht and Finn attempted to comply with that act and failed, petitioners' contention with respect to the brokerage business is of no avail. As we have seen, the language of Section 11 of the Uniform Act is not limited to attempts under any particular act, but its broad remedial provisions fully cover all attempts which, by reason of some error or oversight, are

not carried into effect. Moreover, there is nothing in the Uniform Act which deprives a supposed limited partner of the benefits of Section 11, because his firm engages in the brokerage business. With respect to the brokerage question, petitioners have again attempted to modify the clear language of Section 11 and to create an exception which does not exist.

STATUS OF LIMITED PARTNERSHIP DETERMINED BY NEW ACT.

Petitioners seem to contend that because the parties did not know of the repeal of the Act of 1874, and of the new Act of 1917 and were not attempting to organize a limited partnership under the Act of 1917 the provisions of the Act of 1917 have no application.

Suppose that while the parties to Exhibit A thought they were proceeding under the Act of 1874, they did nevertheless comply with the requirements of the Act of 1917, would anyone doubt that the limited partnership would be a legal and valid limited partnership under the Act of 1917?

When the final step was taken, *i. e.*, the filing of the limited partnership certificate, the Act of 1917 was in force. The fact that the parties may have had in mind the Act of 1874 would not have rendered ineffectual the firm they were organizing, if in fact the things they did had been a compliance with the Act of 1917.

When the limited partnership certificate was filed on July 2, 1917, the parties to Exhibit A *were attempting to organize a limited partnership*. The reason why it is contended that a limited partnership was not legally organized was not because what was done was not a compliance with the Act of 1874, but because it was not

a compliance with the Act of 1917 which was the law of Illinois on that date.

In order to establish that on July 2, 1917, a limited partnership could not be organized in Illinois to carry on a brokerage business, the Limited Partnership Act of 1917 must be applied to the situation, *but that act cannot be applied for the purpose of establishing that no limited partnership was legally organized and at the same time the application of the act be denied for the purpose of depriving the parties of the beneficial provisions of the act.*

As already stated, in their effort to establish that Section 11 of the Uniform Limited Partnership Act does not apply, petitioners insist that Section 11 was intended to apply only to limited partnerships formed under the Uniform Partnership Act of 1917.

They call attention first to the fact that Section 1 of the 1917 act defines a limited partnership.

They call attention to Section 30 which provides that a limited partnership "formed under any statute of this state prior to the adoption of this act" may become a limited partnership under the 1917 act in the manner therein pointed out.

They point to Subsection 2 of Section 30 which provides that "a limited partnership formed under any statute of this state prior to the adoption" of the 1917 act, until or unless it becomes a limited partnership under the 1917 act, shall continue to be governed by the provisions of the 1874 act and they point to Section 31 which provides that except as affecting "existing limited partnerships" to the extent set forth in Section 30 the Act of 1874 was repealed.

At the time the Act of 1917 became effective Marcuse & Co. was not a limited partnership "formed under

any statute of this state prior to the adoption" of the 1917 act. The attempted limited partnership in so far as it had progressed prior to July 1, 1917, was in *process* of organization. Petitioners have pointed out that Section 8 of the Act of 1874 provided that no limited partnership should be deemed to have been formed until the limited partnership certificate and the required affidavit had been properly filed. This had not been done, hence, it is contended the then contemplated limited partnership on July 1, 1917, was not a limited partnership formed under any statute prior to the adoption of the 1917 Act.

Section 30 of the Act of 1917 was not intended to apply to a contemplated limited partnership only in process of organization, but to a legally organized limited partnership and, therefore, under Section 31 of the Act of 1917, which by its very terms applies only to "existing limited partnerships," the Act of 1874 was not continued in force as to Marcuse & Co. for the reason that when the Act of 1917 became effective Marcuse & Co. was not an existing limited partnership.

In fact the Act of 1874 may be and properly should be put out of consideration in this case. All of the discussion by petitioners as to the provisions of the Act of 1874 and the effect of them may be put aside by the court. When the limited partnership certificate was filed there was no Act of 1874 so far as Marcuse & Co. was concerned. That act had been repealed except only as to existing partnerships legally organized under some prior act, therefore, the legality of the limited partnership known as Marcuse & Co. must be tested by the provisions of the Act of 1917.

There is nothing in the Act of 1917 to warrant the belief that the legislature intended that Section 11 should have no application to a case where the final step

in the process of organization was taken when the Act of 1917 was in force simply because the organization had been begun and steps in the process of organization had been taken before the Act of 1917 became effective. Petitioners, as well as Judge Evans, in his dissenting opinion in the Court of Appeals, have misconstrued the provisions and misconceived the effect of the Act of 1917.

TENDER AND PAYMENT WERE NOT NECESSARY.

For the first time in this case petitioners in this court urge the contention that the amount thus tendered and paid into court was not sufficient. No such contention was raised on the trial in the District Court, but the testimony of the witness Finn (Rec., 654, 655) was undisputed. No such contention was raised in the Court of Appeals. This clearly appears from the opinion of that court in which it is said, referring to Section 11 (Rec., 743) that

“it is not contended that the unconditional payment of the \$46,000 falls short of compliance with the section if the section has application.”

Petitioners cannot make this contention for the first time in this court. Failure to raise this point before was a waiver of it.

But, aside from this there is no merit in the contention. Regensteiner and the Studebakers were creditors of the firm of Von Frantzius & Co. and were among the individuals to whom Marcuse issued trust certificates when he finally succeeded in taking over the assets of that company. Under the terms of Exhibit A, 25 per cent of the net profits of Marcuse & Co. was to be paid to Marcuse until all profits received by him exclusive of salary and interest should be sufficient to pay the trust certificates issued by him to the creditors of

Von Frantzius & Co. A portion of the profits of Marcuse & Co. accruing to him, were to be used to pay off the creditors of Von Frantzius & Co. to whom Marcuse had issued such trust certificates. These trust certificates evidenced his individual plan and undertaking. No question was raised in the trial court as to whether or not any payments were made to these creditors of Von Frantzius & Co. and there was no evidence on the point. In fact no payments were made to the holders of Von Frantzius certificates out of dividends of Marcuse & Co. There is no foundation in fact for petitioner's argument and, in making it, they entirely overlook the distinction between creditors of the firm of Von Frantzius & Co. and limited partners under Exhibit A. The position of Hecht and Finn as creditors of Von Frantzius & Co. and their position as limited partners are two very different positions, and so too as to a creditor of Von Frantzius & Co. who might also be a certificate holder under Exhibit B. Section 11 has no application to creditors as such of Von Frantzius & Co. Vette and Zunker were not even creditors of that firm. (Rec., 473.)

The various motives which may have induced Vette, Zunker, Regensteiner and Studebaker Bros. Trust to purchase trust certificates, are wholly immaterial. In the case of *Burnett v. Snyder*, 81 N. Y. 550, 557, 37 Am. Rep. 527, 532, the court said:

"The motive which induced Snyder, by indirection, to become interested in the business of Strang, Platt & Co., so long as the arrangement made did not operate as a fraud upon the creditors of the firm, is not a material circumstance."

Section 11 has no relationship to anything a limited partner might have been paid as a creditor of the partnership and certainly it has no relationship to anything which he may have been paid as a creditor of some other partnership, *i. e.*, Von Frantzius & Co.

Moreover, inasmuch as there had been no decisions passing upon the point counsel for Hecht and Finn no doubt pursued the wiser course in tendering the \$46,000 and paying it over to the clerk of the court, but we respectfully urge that no such tender and payment was necessary under the provisions of Section 11. Section 11 says nothing about the repayment of any money. That section provides that upon ascertaining the mistake one who erroneously believes that he has become a limited partner may, on ascertaining the mistake, promptly renounce *his interest in the profits of the business or other compensation by way of income*. What is meant by "his interest in the profits of the business or other compensation by way of income"? Manifestly, it refers to his interest in or right to receive profits or other compensation not paid over. Profits which have already been paid to him or compensation which he has already received belong to him. Such profits or compensation are no longer connected with the business. Where one occupies a position with reference to a business which gives him an interest in unpaid profits which may be paid in future or a right to receive compensation, it is proper and appropriate to speak of his renouncing his interest in such profits or compensation, but if the legislature intended that such an individual must restore to the business the profits or compensation which he had already received it would be wholly inappropriate to say that he must renounce such profits or compensation. The word "renounce" would be wholly out of place in such a situation. What the statute would say is that he must repay or return such profits or compensation.

In the University of Pennsylvania Law Review of January, 1923, Volume 71, page 150, appears an interesting article on "The Nature of Limited Liability under the Uniform Limited Partnership Act," which

is reprinted in the appendix to this brief, page xlvi. It is really a discussion of this case as decided by the Court of Appeals and among other things it is pointed that no such tender and payment was necessary under the provisions of Section 11.

POSITION OF THESE RESPONDENTS AS TO TENDER AND RENUNCIATION.

Comment is made upon the fact that these respondents took no part in the renunciation and tender of \$46,000 by Hecht and Finn under Section 11 of the Uniform Act of 1917. Hecht and Finn signed Exhibit A believing that they thereby became limited partners in Marcuse & Co. Their execution of that contract demonstrates that belief.

Vette, Zuncker and Regensteiner did not believe that by purchasing trust certificates they became partners, either limited or general, in any firm. They had no such intention. Exhibit B is ample proof of this. The same is true of Hoffman, and, of course, neither of the Studebakers had any such belief or intention.

We have contended and still contend that, even if Hecht and Finn are held to be general partners, these respondents cannot be so held. However, it is clear that these respondents cannot be held to such liability if Hecht and Finn are not liable. A holding in favor of Hecht and Finn disposes of the partnership question as to these respondents as well. We have a right to demonstrate, if we can, that Hecht and Finn are not liable. Hecht and Finn may be held not liable by reason of their compliance with the partnership statutes of Illinois, or by reason of their compliance with Section 11 of the Uniform Act of 1917. In any event the result is the same, *i. e.*, these respondents are not liable as general partners.

Petitioners argue that Hecht and Finn had no authority to tender and renounce for any of the certificate holders; that the other certificate holders refused to give them any such authority and that the Court of Appeals erroneously held that all of the certificate holders were entitled to the benefit of the tender and renunciation made by Hecht and Finn.

Vette, Zuncker and Regensteiner must be connected with the partnership, if at all, through Exhibit B. The Studebakers must be connected, if at all, through the Studebaker Bros. Trust instrument and through Exhibit B. If Hecht and Finn may be said to have represented the certificate holders it was under and within the provisions of Exhibit B and, as the Court of Appeals well suggested, it would be unconscionable to attempt to charge the certificate holders with responsibility on the theory that Hecht and Finn represented them in this partnership for the purpose of fastening upon them the liability of general partners and then deny them the benefit of what Hecht and Finn did toward protecting them against any such liability. (Rec., 743, 744.) In support of their contention that these respondents refused to authorize Hecht and Finn to tender and renounce for them, petitioners refer to testimony given by Mr. Platt.

The court should have in mind that while Mr. Platt very strenuously insisted that neither Hecht, Finn, Vette, Zuncker, Regensteiner or the two Studebakers, or any of them, are liable as general partners, he argued that if, however, Hecht and Finn should be held to be liable the others should be likewise held. This was his position in the trial court.

The court will find his testimony on Rec., 658-661. If one will read his cross-examination it will not be

difficult to clearly understand the position which Mr. Miller and Mr. Donald Defrees took in the conference to which Mr. Platt invited them.

Hecht and Finn were the trustees under Exhibit B. Mr. Platt's firm then represented both of them. He was preparing a draft of the written tender and renunciation. He had inserted a phrase in the instrument to the effect that Hecht and Finn were making tender by authority of the beneficiaries under the trust. The matter had not been submitted to the beneficiaries under the trust and the statement was inaccurate except as that authority grew out of the relationship of Hecht and Finn as trustees of the Hecht-Finn Trust, and Mr. Miller suggested to Mr. Platt, and the suggestion was concurred in by Mr. Defrees, that if the trustees made the statement they would have to make it on their own responsibility and that Mr. Platt, as counsel for Hecht and Finn, would have to assume the responsibility of deciding whether these trustees should make the tender on their own behalf or whether it was their duty as trustees to make the tender not only on their own behalf as limited partners, but on behalf of all the certificate holders.

Hecht and Finn made the tender and renunciation "acting on behalf of themselves and each acting for himself individually and also acting as Trustees under a Trust Agreement, a copy of which is deposited with the Chicago Title & Trust Company of Chicago, Illinois, and on behalf of all beneficiaries under said trust agreement," etc. (Rec., 654, 655, 58, 59), which, of course, was the thing for them to do.

The partnership acts are not to be strictly construed. They are to be liberally construed. Section 28 of the Limited Partnership Act provides that the rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(Hurd's Rev. Stat. of Ill. Ch. 106a, 1921, Sec. 72. See this brief, pp. 34, 35.) A court is to give attention to the conscience of a situation. Justice and equity are to play a part in the decisions of the courts. The \$190,000 of limited partnership money went into the capital of this business and every dollar of profits paid out on account of this limited partnership contribution to the capital of the firm with interest thereon and more went into the hands of the clerk of the court for the benefit of the estate and, as the Court of Appeals said in referring to the respondents:

"Their connection with the partnership being thus traced through their representation by Hecht and Finn, it follows that if such representation would operate to charge them, they should in good conscience also have the benefit of whatever Hecht and Finn may have done which would bring relief from the charge." (Rec., 743.)

This holding is in keeping with the spirit of the statute and with the conscience of the case.

BELIEF OF HECHT AND FINN.

There can be no serious question but Hecht and Finn erroneously believed they were becoming members of a limited partnership.

This Court of Appeals stated in its opinion (Rec., 740):

"It is apparent that none of the parties to the contract, or the certificate holders under the Hecht-Finn Trust contemplated or supposed that general partnership liability was assumed by any of them except Marcuse and Morris; and it was the evident understanding and belief of all that the others, whether called special partners or certificate holders, would have no liability beyond their investment, and no participation in the conduct and control of the business, which was by the agreement committed wholly to Marcuse and Morris."

This statement by the Court of Appeals was not only justified, but required by the evidence in the record. It was never in the mind of anyone that any of the parties other than Marcuse and Morris should be general partners. Marcuse did not attempt to organize any partnership other than a limited partnership.

In the conversation which Marcuse had with Clement Studebaker, Jr., in Boston prior to April 2, 1917, he told Clement Studebaker, Jr., that he wanted him to become a *special* partner in the firm that he would form and that he would require at least \$200,000 to be made up of "*special* partnership" money (Rec., 443, 444, 502.) This conversation as indicated took place prior to the execution of the limited partnership documents on April 2, 1917, which were left in escrow.

Marcuse testified that he told Zuncker that Hoffman would become a special partner representing Clement and George Studebaker. (Rec., 449.) This was prior to April 2, 1917.

It was a limited partnership that Marcuse was trying to organize. These references to the record are sufficient to show this. There is nothing to the contrary.

The documents, nine copies of which were signed on April 2, 1917, and left in escrow with Col. Foreman, were designed, if they ever became effective, to organize a limited partnership. (Rec., 228-234, 269-318.) If these documents had become effective, Marcuse and Morris would have been the only general partners. All of the other signers would have been limited or special partners. No one disputes this. When this contemplated limited partnership was abandoned because the New York Stock Exchange objected to a limited partnership with more than two limited partners, etc., Marcuse did not start out to organize a general partnership but he

started out to organize a limited partnership consisting of himself and Morris as general partners and of only two limited partners. Marcuse was asked how it came about that Hecht and Finn became the special partners (Rec., 464) and he testified (Rec., 465) that he asked them whether they would be willing and that they consented, and (Rec., 500) he testified that he was the one who solicited and procured the consent of Hecht and Finn to act as special partners with himself and Morris as the general partners.

May 8, 1917, was the date of the telegram from the Secretary of the New York Stock Exchange to Marcuse, advising him that the committee on admissions probably would have no objections to a firm having two special partners if they were not engaged in any other business and were otherwise passed upon favorably by said committee. (Rec., 262.)

Finn testified that there came a time after May 8, 1917, when some one took up with him the plan of organizing a partnership which would contemplate only two limited partners and his becoming one of them, and he stated that undoubtedly Mr. Sidney Stein (now dead) took up the matter with him. He testified also that Mr. Stein was the one who persuaded him to go into that "limited partnership contract" which contemplated Hecht and himself as limited partners. (Rec., 328.)

After the abandonment of the limited partnership contemplated by the documents left in escrow with Col. Foreman and after Marcuse and Sidney Stein started out to organize the partnership which finally resulted in the limited partnership agreement, Exhibit A, Marcuse and Sidney Stein in a conversation with Buckingham told Buckingham that there could only be two special partners and Stein told Buckingham that they

would like to have Hoffman or somebody else representing the Studebaker interests to be a special partner in the firm that he proposed to organize. (Rec., 52, 553.) These references serve to demonstrate that after the abandonment of the plan which contemplated more than two limited or special partners, the thing that Sidney Stein and Marcuse started out to do, was to organize a limited partnership with but two limited partners. The record does not contain a suggestion to the contrary. No one contemplated for a moment any arrangement under which any one but Marcuse and Morris would be general partners. Exhibit A is a limited partnership agreement. Under it Hecht and Finn were to be limited partners only. Exhibit B recognizes Exhibit A as a limited partnership agreement and that Hecht and Finn were to be limited partners. The certificate filed with the county clerk shows Hecht and Finn to be limited partners. (Rec., 242.) The stationery used by Marcuse & Co. in the conduct of the business of that firm showed Hecht and Finn as limited partners. (Rec., 527, 528.) The same thing is true of the firm's business cards. (Rec., 527, 528.)

Every step that was taken and every document issued was in furtherance of a purpose and intention and evidenced a belief that Marcuse and Morris would be the only general partners and that Hecht and Finn would be only limited partners. The certificate holders other than Hecht and Finn were to be neither general nor limited partners.

A state of mind such as belief may be proven

1. By circumstances which would naturally have brought about such belief.
2. By the conduct of a person indicating such belief.

Greenleaf on Evidence (16th Ed.), Vol. I, p. 67.
Wigmore on Evidence, 1st Ed. Vol. I, p. 303.

Indeed the strongest kind of evidence of a man's belief is such evidence as we have been calling to the court's attention, *i. e.*, discussions in the endeavor to organize a limited partnership; efforts to persuade men to become limited partners, documents consistent with and evidencing an intention to organize a limited partnership, etc. That the partnership was intended to be a limited partnership no man can seriously question, and it follows from these considerations that Hecht and Finn believed that they were becoming limited partners only. *It would be absurd to suggest that these men intended to become limited partners only and endeavored in good faith to see to it that the documents they were executing made them limited partners only and yet executed the documents and went into the arrangement in the belief that they were nevertheless becoming general partners.*

Nor can it be said that they may have subsequently changed their minds about this.

The law's presumption is that they continued of the same mind; and there is no evidence which has any tendency to show that they ever changed their minds.

Hundreds of authorities might be cited for the elementary proposition that a fact or a set of facts once proved are presumed to continue until the contrary is established by proof.

In Greenleaf on Evidence (16th Ed.), Volume 1, page 140, the author states that:

"The opinions, also, of individuals once entertained and expressed, and the state of mind, once proved to exist, are presumed to remain unchanged until the contrary appears."

A presumption of continuance has been frequently

recognized by the courts in the case of intention, purpose or design.

Leport v. Todd, 32 N. J. Law, 124, 129, 131.

Cook v. Moore, 65 Mass. (11 Cush.) 213, 216.

217.

Larsen v. Postal-Tel.-Cable Co. 150 Iowa, 748;

130 N. W. 813, 815.

Barker v. Western Union Tel. Co. 134 Wis. 147;

114 N. W. 439, 440, 441; 126 Am. St. Rep.

1017; 14 L. R. A. (N. S.), 533.

Ruling Case Law, Vol. 10, p. 872.

It is held that mental condition once shown to exist is presumed to continue until the contrary is shown.

Todd v. Todd, 221 Ill. 410, 413, 414.

In the case of *Leport v. Todd*, 32 N. J. L. 124, an intention once proved was presumed to continue in existence for nearly 20 years.

Erroneous belief is not limited to mistakes of fact. A man who believes he is a limited partner may not be because of facts or of law or both. If he believes he is when he is not he has an erroneous belief. Section 11 cannot be limited as petitioners would limit its provisions.

Nor could it be successfully contended that Hecht and Finn could not renounce their interest in the profits, etc., of Marcuse & Co. when they did.

The relief by way of renunciation afforded under Section 11 is not limited to members of prosperous firms,—to those which are definitely assured of future profits? (And what business is?) There is nothing in the language of the statute to support such a contention. It is not so limited. Hecht and Finn brought themselves squarely under Section 11 by their prompt renunciation

and their tender of \$46,000 to the receiver, upon learning of the claim that they were general partners in Marcuse & Co. (Rec., 654, 655), and by their payment of that sum in open court (Rec., 70), it being an amount in excess of all of the profits and income which they had received as special partners of the firm of Marcuse & Co. (Rec., 655.)

It was the clear intent and purpose of Section 11 that anyone who had attempted in good faith to become a limited partner in a limited partnership and who believed himself to be such limited partner might by compliance with Section 11 relieve himself of the formerly existing danger of being made a general partner against his agreement and merely by operation of law.

Accordingly, the Circuit Court of Appeals held that by reason of the provisions of Section 11 and the renunciation and payment by Hecht and Finn none of respondents are liable as general partners.

ALLEGED FALSITY OF LIMITED PARTNERSHIP CERTIFICATE.

Petitioners charge in their brief (page 49) that the limited partnership certificate filed July 2, 1917, was false in two particulars:

- (a) The names of the limited partners were not all disclosed, and
- (b) The amount of the contribution of each limited partner was not correctly disclosed.

Section 4 of the Act of 1874 provides that persons desirous of forming a limited partnership shall make and severally sign a certificate which shall contain, among other things, the names of the general and special partners therein distinguishing which are general and which

are special partners and their respective places of residence and the amount of capital stock which each special partner shall have contributed to the common stock.*

Petitioners, therefore, rely upon a provision of the Act of 1874 to establish that the limited partnership certificate was false, although that act was no longer in force when the final act of organization, *i. e.*, the filing of the limited partnership certificate, took place.

But, even tested by Section 4 of the 1874 act, the certificate is not subject to the attack aimed at it.

First, this certificate is signed by Marcuse, Morris, Hecht and Finn. (Rec., 242.) It gives the addresses of each of these four parties and designates Marcuse and Morris as general partners and Hecht and Finn as limited partners.

Neither Vette, Zuncker, Regensteiner or the Studebakers signed this certificate or had anything to do with it. They are not mentioned in it. They were not parties to Exhibit A. They did not become and had no intention of becoming members of the firm of Marcuse & Co., either general or limited. On the contrary Vette, Zuncker and Regensteiner intended to become only certificate holders under Exhibit B and the Studebakers did not even intend to become certificate holders.

None of these respondents signed the certificate and none of them were named in the certificate as limited partners because none of them were limited partners.

The certificate states the amount of Hecht's and Finn's contributions to the firm as \$95,000 each. (Rec., 242.) The attached affidavit (Rec., 243) was by Mar-

*Section 4 of Limited Partnership Act of 1874 is set forth in petitioner's brief, p. 4.

cuse. In this he states that he was one of the general partners and that the amount of money specified in the certificate to have been contributed by each of the special partners, the aggregate being \$190,000, had been contributed, etc. This was true.

Zuncker paid for the certificate issued to him under Exhibit B with a check payable to Hecht and Finn who were trustees under Exhibit B. The same is true as to Vette and Regensteiner. Hoffman paid for the certificate purchased by Studebaker Bros. Trust with a check payable to his own order and by him endorsed to Hecht and Finn. As heretofore stated Hecht and Finn could have deposited these checks in bank and drawn their own checks payable to Marcuse & Co. for the full amount of \$95,000 each, or they could, as they did, endorse these checks payable to the order of Marcuse & Co. and delivered them, together with their own checks for the balance of \$190,000 for the certificates which they received under Exhibit B, to Marcuse & Co. The manner in which Hecht and Finn handled this was an inconsequential detail.

It was a matter of no consequence to Marcuse & Co. or to any subsequent creditor in what manner Hecht and Finn raised the \$95,000 which each was to contribute to the capital of that firm. The substance of the thing was that under Exhibit A they agreed to contribute \$95,000 and each of them did contribute that amount. They could have made that contribution out of money they had on hand in their own bank accounts or they could have borrowed the money or it could have been raised under Exhibit B, etc. The law was concerned only with the fact that the amount agreed to be contributed by the limited partners was contributed. Future creditors of Marcuse & Co. could have no

other concern. The important fact was that \$190,000 of limited partners' money was to go into the business and that amount did go into the business. It was an actual contribution. Marcuse & Co. received that amount of money.

Crehan v. Megargel, 234 N. Y. 67,* is conclusive against petitioners' contention. In this case the limited partner procured money through a trust arrangement substantially like Exhibit B and put that money into the partnership. The case, as decided by the Supreme Court, Appellate Division, First Department, in January, 1922, appears in 192 N. Y. S. 290. Section 34 of the Partnership Act dealing with limited partners provided that if any false statement be made in any such certificate or affidavit made either upon the formation or renewal or continuance or increase of capital of such partnership, the persons interested therein should all be liable as general partners. (192 N. Y. S. 295.) It was claimed that the certificate was false in that Megargel named therein as special partner and as having contributed a stated amount of money was not the person by or for whose benefit the money was actually and in good faith contributed.

The Court of Appeals said, referring to a creditor (234 N. Y. 80):

"We fail to see how he is interested in the fact that the special partner has borrowed the capital which he contributes or has received it under some other form of arrangement even less compelling upon him than a loan, so long as the arrangement does not result in a violation or evasion of the statute and of the requirement that the special capital shall be contributed and that the special partner shall not assume the status of a general partner."

*The opinion of the New York Court of Appeals in *Crehan v. Megargel* appears in the appendix to the brief of these respondents in opposition to certiorari, p. 26.

And the Appellate Division said (192 N. Y. S. 297):

"All that the creditors are interested in so far as the special partner is concerned, is that the amount agreed to be contributed as special capital has in fact been paid in. It was a matter of absolute indifference to the creditors in what manner the special partner received his money so long as it was paid into the capital of the firm in accordance with the agreement."

The New York court held that the receipt holders under the trust instrument were not persons interested in the partnership within the meaning of the statute.

See, also, as bearing on this point, *Lawrence v. Merrifield*, 42 N. Y. Sup. Ct. 36, for an interesting opinion which was affirmed without opinion by the Court of Appeals in 73 N. Y. 590.

The fact that the attorneys for Vette, Zuncker, Regensteiner and Studebaker Brothers Trust met with Hecht and Finn at the office of Marcuse & Co. on Saturday morning June 30th when Exhibits A and B were executed and that the checks of Vette, Zuncker, Studebaker Brothers trust and the check of Regensteiner Colortype Company, with which Regensteiner paid for the number of shares he took under Exhibit B, were there delivered is a matter of no consequence. The fact cannot be denied that Hecht and Finn raised the \$190,000 which they agreed to contribute to the special partnership, under and by means of the Hecht-Finn trust (Exhibit B). They contributed that amount of money to the capital of Marcuse & Co. as they agreed to do under Exhibit A. The statement in the certificate that Hecht contributed \$95,000 and Finn a like amount was true. The statute in question did not concern itself with the source from which they procured the money.

But, as already pointed out, the section of the 1874

statute upon which petitioners ground their contention that the certificate was false was not in force on July 2nd, when the certificate was filed, and accordingly this section has no application.

BUCKLEY v. LORD.

Petitioners cite (Brief, p. 52) and rely on *Buckley v. Lord et al.* (sometimes referred to as *Buckley v. Bramhall* or *Bulkley v. Marks*, 24 How. Pr. 455 (15 Abb. Pr. 454). In the case of *Burnett v. Snyder*, 11 Jones & Spencer (N. Y.), 238, in which a subpartner was held not to be liable as a partner, this case was discussed and disregarded.

The opinion in the Buckley case is one of a court of inferior jurisdiction. No authorities are cited. It was decided in 1863, at a time when the courts still regarded themselves as bound by harsh technical rules in the construction of limited partnership statutes. The principles relied upon in that case have been overruled by later decisions of the New York courts.

In the Buckley case a limited partner was held to be liable as a general partner because he had made a false affidavit, and, a third person was held liable as a partner because he had participated in the business. The affidavit was held to be false because it recited that the limited partner had contributed \$20,000 to the capital of the firm, whereas \$8,000 of this money was contributed by the third party. Under later decisions of the New York courts, this affidavit would not be regarded as false.

Lawrence v. Merrifield, 42 N. Y. Superior Court, 36, affirmed 73 N. Y. 590.

The language which the court used in criticizing the arrangement in the Buckley case was unnecessary and mere dictum. However, it should be noted that the reason that the third party did not wish to become a limited partner was that he desired to exercise the rights of a general partner. This circumstance alone clearly distinguishes that case from any element in the case before this court. Doubtless the court's criticism was aimed at this feature of the situation.

Buckley v. Lord received the comments of the New York Supreme Court, Appellate Division, First Department in *Crehan v. Megargel* (192 N. Y. S. 298), where that court said the court in the Buckley case did not hold Bramhall liable merely because a portion of the money contributed in the name of the special partner came from him, but because of his participation in the co-partnership through the guise of a special partnership designed to evade the law of limited partnership.

Respondents did not participate in any way in the conduct of the business of Marcuse & Co.

Under the title of *Buckley v. Bramhall* that case was also commented on by the Court of Appeals of New York in the *Crehan-Megargel* case, 234 N. Y. 67, 78, 79.

UNDER UNIFORM ACT ONLY PERSON INJURED CAN RECOVER BECAUSE OF FALSE STATEMENT.

Moreover, the Court of Appeals well pointed out in its opinion whatever may have been the rigors of the old Limited Partnership Act with the harsh construction placed upon it, an entirely different policy has been written into the law by the present Limited Partnership Act. *No longer is technical compliance required.*

Substance is now the thing. Innocent people are not to be penalized because an astute lawyer may be able to point out a technical inaccuracy in a certificate. Even where a false statement is made liability does not result as to all, but only as to those who executed the certificate knowing it to be false, and in favor of those only who suffer loss through reliance thereon. That is what Section 6 of the Limited Partnership Act plainly provides. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 50.) In other words, if a false statement is made in a certificate one who suffers loss by reliance on such statement may hold *any party to the certificate* who knew the statement to be false at the time *he signed* the certificate or subsequently but within a sufficient time *before the statement was relied upon* to enable him to cancel or amend the certificate, etc. In other words, no one can be held to be liable except a party to the certificate and not then unless he knew the statement to be false at the time he signed the certificate or subsequently but within a sufficient time before the statement was relied upon to enable him to cancel or amend, etc., and no one can hold such an individual liable *except one who suffered by reliance on such false statement*.

One creditor might recover while another could not because one might suffer loss by reliance on such false statement while the other did not.

But such doctrine has no application to a bankruptcy proceeding because a bankruptcy proceeding is not for the benefit of one creditor, but of all creditors. For instance, in bankruptcy liability by estoppel has no application, but there must be an actual partnership, a liability *not because the party sought to be held liable has been held out to be a partner, but because he was a partner*. See this brief, pp. 74, 75.

And again, it is also to be borne in mind that the present Limited Partnership Act is to be liberally and not strictly construed. (Section 28, Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 72. See this brief, pp. 34, 35.

There is no merit in petitioners' contention even as applied to Hecht and Finn.

CONTENTION AS TO FALSE STATEMENT HAS NO APPLICATION
TO THESE RESPONDENTS.

As to Vette, Zuncker, Regensteiner and the two Studebakers, and each of them, the contention as to a false certificate can have no possible application. None of them signed the certificate or had anything to do with it.

There is not a scintilla of evidence for a contention that anyone suffered any loss in reliance upon any of these respondents having any possible connection of any kind with Marcuse & Co. or to indicate that petitioners or any of the other creditors of Marcuse & Co. had any knowledge of Exhibit B or any of the certificates issued thereunder or that the Hecht-Finn Trust was in existence.

B.

IRRESPECTIVE OF SECTION 11, RESPONDENTS
ARE NOT PARTNERS UNDER PROVISIONS OF
UNIFORM GENERAL PARTNERSHIP ACT.

PERSONS NOT PARTNERS AS TO EACH OTHER ARE NOT
PARTNERS AS TO THIRD PERSONS.

The Circuit Court of Appeals also held that wholly independent of Section 11, none of the Respondents are general partners as to creditors because they are not general partners as to each other.

A general partnership act, known as the "Uniform Partnership Act," was similarly enacted at the same time by the same Illinois Legislature, covering the relations of general partners. This act had exactly the same genesis and history as the other uniform acts above mentioned. This act also became the law in many other states and is one of the same chain of "Uniform Acts," which forms a wholly new code concerning general partnerships for the states adopting it. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Secs. 1 to 44 inc.)

Among other things it provides:

"4. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

7. In determining whether a partnership exists these rules shall apply:

(1) Except as provided by Section 16, *persons who are not partners as to each other are not partners as to third persons.*" (Section 16 deals with estoppel against one who holds himself out as a partner, and has no application here.)

This statute was in force on July 2, 1917, and has been in force since that time.

This is a general partnership act. It deals with the relations of general partners. The provision means

that persons who are not general partners as to each other are not general partners as to third parties as clearly as if the word "general" had been used in the section.

Hecht and Finn signed an agreement to be and become *limited partners* with Marcuse and Morris. They did not *agree* to become general partners. If they became *general* partners, it was because, and only because, their effort at limitation failed, and some rule of law *forced* on them the relation of general partners, against their will, and contrary to their express agreement and intention. What rules of law could have that effect? *None*, unless it was the 1874 statute. But that statute was not in force on July 2, 1917, and afterward. Then no law existed which would have such an effect. At that time and since, the new Illinois Code on partnerships prevailed, both as to *general* and as to *limited* partners, and under that code no one is a general partner as to third persons, unless he is also such partner as to his alleged partners. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 7) (1) provided, of course, that he has not held himself out to creditors as a general partner. (Sec. 16, same act), and if he has done this, he may be held, not because he is such partner, but because he is estopped to deny that he is such partner, but as pointed out, this cannot be so in a bankruptcy proceeding. (Brief, pp. 34, 35.)

Excluding (as we must) the compulsion and force of the dead 1874 statute, are Hecht and Finn, *general partners* with Marcuse and Morris?

It is a cardinal principle of law that persons are not partners unless they *intend* to be such. Every partnership rests on the mutual consent of the members.

Ruling Case Law, Vol. 20, p. 831.

- Phillips v. Phillips*, 49 Ill. 437, 439.
Bushnell v. Consolidated Ice Machinery Co.,
 138 Ill. 67, 74, 75.
Grinton v. Strong, 148 Ill. 587, 596.
Reed v. Engel, 237 Ill. 628, 631.
Goacher v. Bates, 280 Ill. 372, 376.
London Assurance Co. v. Drennen, et al., 116
 U. S. 461, 472.

Here Hecht and Finn never intended to be general partners and never consented to be such.

If Marcuse and Morris should now pay the firm debts, could they sue Hecht and Finn for contribution? Obviously, No! Because the four *solemnly agreed* that Hecht and Finn should not be liable for partnership debts beyond the \$190,000 contributed by them.

It is another test of partnership that each partner is *agent* for all the others and binds them by his contracts within the scope of the partnership business. (See page 41 of this brief.)

Did Hecht and Finn agree that they would be bound by the transactions in stocks made by Marcuse and Morris beyond the contributions made by them to the firm?

On the contrary, in their agreement between themselves, Exhibit A, they *agreed* exactly the reverse.

In section numbered 2 of Exhibit A it is expressly agreed that

"the liability of the said special partners shall be limited to the amount furnished by each of them towards the capital of the said firm and that they shall not be liable for any partnership debts or obligations beyond said amounts contributed by them respectively, and that no provision hereof shall be construed to in any manner extend the said liability of the said special partners." (Rec., 20.)

Section 14, which refers to losses and expenses, manifestly means that losses and expenses are to be paid out of the earnings and capital of the business and that such losses are to be charged against the contributions of the partners, general and limited, to the capital of the firm in the proportions in which profits were to be distributed. This is made clear by the last sentence of Section 14 which reads:

“It is hereby fully agreed and understood, however, that the liability of the said special partners shall be limited to the amount contributed by them respectively to the capital or capital stock of said firm.” (Rec., 14.)

Petitioners state in their briefs (p. 75), that the limited partners agreed to share the losses, but this is true only to the extent of and not beyond the amount of their contributions to the capital of the firm. Of course, a limited partner places at the risk of the business the amount of his contribution to the capital of the firm and that is the extent of his commitment, and Exhibit A makes too plain for doubt that this was the extent of the commitment of Hecht and Finn.

We go a step further. The respondents, other than Hecht and Finn, did not sign Exhibit A. (Rec., 20, 25.) They did not *agree* to be limited partners with Marcuse and Morris, or any kind of partners. The 1874 act could not operate to force them from the position of limited partners to that of general partners, because they never agreed to be even limited partners.

On the contrary, Hecht and Finn (by Exhibit B) specifically agreed in terms that the certificate holders

“shall have no right, title or interest, directory, proprietary or otherwise, in the said copartnership, or in or to the property or assets of said copartnership (of Marcuse & Co.) * * * nor shall

the holders of said trust certificates, by the acceptance thereof, be construed to have assumed any liability with respect to said trust, *or said copartnership.*" (Ex. B, Sec. 6; Rec., 29.)

Marcuse and Morris, in writing endorsed on Exhibit B, expressly consented that this should be the relation of the certificate holders. (Rec., 31, 32.)

The respondents, other than Hecht and Finn, never *agreed* to be partners of Marcuse and Morris, but Marcuse and Morris, as well as Hecht and Finn, agreed that they *should not be partners*, and should have no liability for said copartnership, or its acts.

Applying to this situation the Illinois statute, and the legal rules of determining, *inter se*, who are partners, could Marcuse and Morris now pay the firm debts and by virtue of Exhibit B enforce contribution from the original certificate holders, or from Gardner? or from Grollman? or from the grandchildren of George M. Studebaker?

Did the latter *intend* to be partners?

Did anyone, by acquiring a certificate under *Exhibit B* thereby constitute Marcuse and Morris his *agents* to buy and sell stocks, and bind him as principal of Marcuse and Morris?

And could any certificate holder likewise bind Marcuse and Morris? And if so, what certificate holder, and during what period? Was it while he owned the certificate, or after he sold it? When he sold it, did he continue a "partner," or did he thereby absolve himself from further liability and cease to be an agent? Did the new holder (Grollman) become a "partner" in Marcuse & Co.?

Applying these obvious tests, it is impossible to prop-

erly conclude that these respondents were "partners" of Marcuse & Co. or selected Hecht and Finn to operate the partnership. There is absolutely no evidence on which any such conclusion may be properly reached. Not one of these respondents, or any one representing any of them, ever "selected" Hecht or Finn to become their "agents," or to "operate the partnership." (Rec., 268, 327, 328.) On the contrary, the uncontradicted evidence of both Finn and Marcuse on this point shows exactly the converse of this proposition of fact. (Rec., 267, 328, 331, 460, 465, 500.) When, therefore, the trial court said that "Hecht and Finn were 'selected' by the respondents as their 'agents' to operate a partnership," the court fell into grievous error.

Exhibit B creates no such relation, but does create exactly the converse of that relation.

RESPONDENTS NOT PARTNERS WITHIN DEFINITION IN UNIFORM GENERAL PARTNERSHIP ACT.

But petitioners argue that all of the parties were general partners within the definition contained in Section 6 of the Uniform General Partnership Act.

That section is as follows:

"A partnership is an association of two or more persons to carry on as co-owners a business for profit." (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 6.)

The association must be for the purpose of, and with the *intention* to

- (a) carry on
- (b) as co-owners
- (c) a business for profit.

If there is an association of two or more persons formed for the purpose and with the intention to do these things there is a partnership, otherwise not. That is what Section 6 means. It could not be plainer if the word "intention" had been used.

But,

(1) The certificate holders under Exhibit B (the Hecht-Finn Trust Agreement) did not form an association. They formed a trust modeled along the lines of a so-called "Massachusetts Trust."

(2) Neither the certificate holders under Exhibit B, nor Hecht or Finn, nor any of them, formed an association with Marcuse and Morris "to carry on" this business. The court will have in mind that Section 6 relates to a general partnership. The words "to carry on" clearly contemplate an association in which each member is to participate in carrying on, *i. e.*, managing and conducting the business. Limited partners do not carry on or manage, conduct or control a business. These things are done by the general partners. Therefore, one who enters into or assists in forming an association to be composed of both general and limited partners, in which he is to be only a limited partner and have nothing to do with the management, conduct or control of the business, does not go into an association "to carry on" the business, for the business is to be carried on, not by him or by him in conjunction with the others, but by the general partners. Indeed, a limited partner must refrain from taking part in the management, conduct or control of the business, for otherwise he might expose himself to the liability of a general partner, and *no one but Marcuse and Morris had any such intention.*

(3) The certificate holders under Exhibit B were not co-owners. George M. and Clement Studebaker were not co-owners. The latter were not even certificate holders. Section 6 of Exhibit B (Rec., 244, 29), in language as plain as could be used, excludes the idea of the certificate holders being co-owners. We quote from that section as follows:

"The holders of Trust Certificates shall have no right, title or interest, directory, proprietary or

otherwise, in the said copartnership, or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto, both legal and equitable, being vested in the Trustees," etc.

Many times during their brief do petitioners assert that the certificate holders controlled this business. This was not true. Vette, Zuncker, Regensteiner, Hoffman and the Studebakers had nothing to do with the management and control of this business. The same is true of Hecht and Finn, for limited partners neither manage nor control the business.

Much is said about the provisions of Section 5 of Exhibit B (Rec., 244, 28, 29) relating to dissolving the partnership and winding up the business. Respondents seek to magnify this into control of the business.

There is a wide distinction between a conditional right to cause the termination of a business and having the management and control of it, which petitioners overlook or ignore. The certificate holders could, under the conditions stated, bring about the winding up of the business. *Under no circumstances did they have anything to say or do in the management, control or conduct of the business.* This is clearly recognized by the court of appeals in its opinion. (Rec., 744.)

(4) These respondents did not share in the profits of the business *as profits*. See this brief pages 94, 97 for authorities which remove this proposition from doubt.

They had no right to, or proprietary interest in, profits as they were being earned and while undivided. There was no communion of profits giving respondents control as principals over the conduct of the business. After profits were divided and the share due the limited partners was paid over to Chicago Title & Trust Company *and thus ceased to be profits and became a part of the trust fund*, the certificate holders' right to a distribution

of this fund arose and when distributed it was the distribution of a trust fund and not the profits of Marcuse & Co.

The court of appeals was clearly right in its statement that under the law, as it was prior to the adoption of the uniform partnership act, *the existence of a general partnership as between alleged partners was a question wholly of their intention to be gathered from their agreement.*

Section 6 of the General Partnership Act is to the same effect. Without the intention to be general partners there is no general partnership and this intention must be gathered from the contract which the parties have entered into. Section 7 (1) adds the finishing touch for, in language too plain to admit of construction, the legislature has declared that if parties are not partners as between themselves they are not partners as to third persons. (Hurd's Rev. Stat. of Ill., 1921, Ch. 106a, Sec. 7 (1)).

The Oklahoma Statute on partnership (Comp. Stats. Okla. Anno. 1921, Sec. 8103) contained this definition:

"Partnership is the association of two or more persons for the purpose of carrying on business together, and dividing its profits between them."

The association must be for the purpose of "carrying on business together," etc. The Supreme Court of Oklahoma held that under this statute parties must *intend* to form a partnership.

McKallip v. Geese, 30 Okl. 33, 118 Pac. 586.

Municipal Paving Co. v. Herring, 50 Okla. 470; 150 Pac. 1067, 1069.

It seems plain, and the Circuit Court of Appeals accordingly correctly held, that under the general partnership act, none of the Respondents are general partners of Marcuse & Co. and liable for its debts.

II.

EVEN IF HECHT AND FINN WERE LIABLE AS PARTNERS (WHICH IS DENIED) THESE RESPONDENTS WOULD NOT BE LIABLE.

The Court of Appeals, having reached the conclusion, that Hecht and Finn are not general partners of Marcuse & Co., and that therefore the other respondents could not be, did not discuss the other questions, applicable to the respondents other than Hecht and Finn.

It is submitted that, as to these respondents, the same conclusion on those issues, must necessarily have been reached.

Even if the Limited Partnership Act, and Section 11 thereof, and the General Partnership Act, had no effect, and Hecht and Finn were therefore *forced* by operation of law into the position of general partners, nevertheless, we contended, and now contend, that the other respondents were not, and could not be held to be partners.

NO ELEMENT OF ESTOPPEL.

There is no element of estoppel in this case, either in fact or in law. Hecht and Finn never held themselves out as anything other than limited partners (See this Brief, p. 10.) (Rec., 528.) There is no evidence that any creditor ever believed them anything else, or acted on their credit.

As to the other respondents, some of whom held certificates under Exhibit B, there is not the slightest evidence that any creditor of Marcuse & Co. ever heard that any of them had any relation to Marcuse & Co., or ever extended any credit to that firm because of ever having heard of them in connection with it.

But even if that were not the fact, in bankruptcy proceedings to justify a finding that a person is a partner, there must be evidence from which the court can find as a fact that he is a partner. There must be an actual partnership. An estoppel operates only in favor of those particular creditors who have been misled by a "holding out." A bankruptcy proceeding is for the benefit of all creditors, and all must stand upon the same footing. The doctrine of partnership by estoppel has no place in any bankruptcy proceeding—much less here.

In re Kaplan (C. C. A. 7), 1916, 234 Fed. 866.

In re Pinson & Co. et al. (Dist. Ct. Ala.), 180 Fed. 787, 789.

Jones v. Burnham, Williams & Co. (C. C. A. 3rd Cir.), 138 Fed. 986.

In re Clark (Dist. Ct. Wash.), 1901, 111 Fed. 893, 894.

Collier on Bankruptcy (11th Ed. 1917), p. 167.

THE STATUS OF THE PARTIES MUST BE DETERMINED FROM THE WRITTEN INSTRUMENTS, EXHIBIT A AND EXHIBIT B.

The basic relations of the parties must be determined from the two written instruments, viz; the Limited Partnership Agreement (Exhibit A), and the Hecht-Finn Trust Agreement (Exhibit B).

Exhibit A and Exhibit B are signed and executed written instruments. By the most elementary principles of construction the agreement of the parties who executed them must be determined from the face of the instruments themselves. No one can read them without understanding exactly and precisely what the parties agreed.

At the hearing upon the partnership issue *petitioning creditors introduced in evidence* the limited partner-

ship agreement Exhibit A as petitioners' Exhibit 3 (Rec. 239, 20); also the trust agreement (Exhibit B) as petitioners' Exhibit 6 (Rec. 244, 26).

Petitioning creditors also introduced in evidence certain of the trust certificates issued under Exhibit B and asked for an admission that all of the certificates issued under Exhibit B by Chicago Title & Trust Company were in like form (Rec. 253, 254, 255, 334).

They introduced these documents as links in their chain of evidence by which they sought to lay the foundation for their contention that all of the respondents are liable for the debts of Marcuse & Co.

Where there is a written and signed agreement on the subject, the partnership question must be determined from the language of the contract itself.

Fougner v. First National Bank of Chicago, 141 Ill. 125, 128.

Grinton v. Strong, 148 Ill. 587, 596.

Mayfield v. Turner, 180 Ill. 332, 336.

Stettauer et al. v. Hamlin, etc. 97 Ill. 312, 318.

Hendricks v. Webster (C. C. A. 8th Cir.), 159 Fed. 927, 929.

Standard Sewing Mach. Co. v. Leslie (C. C. A. 7th Cir.), 78 Fed. 325, 328.

Such written contract, *creating a partnership*, must itself fix the fact as to who are the partners.

Extraneous evidence will not be heard to contradict such written partnership contract, nor can it be contradicted or explained by previous agreements or attempted agreements.

Clark v. Mallory, 185 Ill. 227, 232.

Evans v. Hanson, 42 Ill. 234, 237.

Pierpont v. Lanphere, 104 Ill. App. 232, 236.

Beecher v. Bush, 45 Mich. 188, 7 N. W. 785,
40 Am. Rep. 465.

Gardt v. Brown, 113 Ill. 475, 479.

Schultz v. Plankinton Bank, 141 Ill. 116, 120.

Although the rule which forbids the introduction of evidence as to conversations, negotiations or transactions antedating the execution of a written instrument, in order to show what the parties to such instrument intended, does not generally apply as against one who is a *stranger* to the instrument, yet this exception does not hold in favor of a *stranger* who bases his claim, or his right to recover, upon the written agreement or asserts rights which originate in it, or who relies upon such instrument in whole or in part to establish his claim. If he relies upon the document to establish any part of his claim he cannot go behind it, but is as much bound by its terms as is a party to it. In such a case the general rule which forbids the introduction of extraneous evidence applies exactly as between the parties themselves.

Schultz v. Plankinton Bank, 141 Ill. 116, 120,
123.

Hendricks v. Webster (C. C. A. 8th Cir.), 159
Fed. 927.

Spingarn v. Rosenfeld, 24 N. Y. S. 733, 736.

Current v. Muir, 99 Minn. 1, 108 N. W. 870.

Union Machinery & Supply Co. v. Darneil, 226
Wash. 154, 154 Pac. 183, 185.

Wigmore, Evidence, Vol. 4, pp. 3409, 3451.

Elliot, Evidence, Vol. 1, p. 646, 647.

Ruling Case Law, Vol. 10, p. 1021.

Corpus Juris, Vol. 22, p. 1294.

Jones (1913) Commentaries on Evidence, Vol.
3, p. 220.

Here the petitioning creditors necessarily rely on the written instruments, Exhibits A and B. (Rec., 20, 26.) It is, by these instruments (the Limited Partnership Agreement and the Trust Agreement) that they seek to bind Marcuse, Morris, Hecht, Finn and these respondents together. They introduced them in evidence as a part of their case (Pet. Ex. 3, Rec., 239, 20; Pet. Ex. 6, Rec., 244, 26) and are bound by the same rule as a party to them would be.

It follows that the terms of these contracts Exhibits A and B, must prevail, as determining what agreements the parties made among themselves.

It clearly appeared that the certificate holders paid their money in sole reliance on the Exhibit B arrangement, and that all of the parties perfectly understood it.

A.

THE HECHT-FINN TRUST AGREEMENT CREATED A TRUST AND DID NOT ESTABLISH ANY PARTNERSHIP RELATION.

Under the signed instrument (Exhibit B), Hecht and Finn were trustees, and the certificate holders were *cestuis que trust*. No partnership relation was thereby created between Hecht and Finn and these respondents.

The limited partnership contract, Exhibit A, provides that Marcuse and Morris shall be general partners, and that Hecht and Finn shall be limited partners with limited liability only. These respondents are not mentioned in Exhibit A. They did not sign it and are not parties to it.

ANALYSIS OF EXHIBIT B.

Exhibit B was executed by Hecht and Finn *alone*. It was accepted in writing by the Chicago Title and Trust Company. Marcuse and Morris executed a specific *consent* that Hecht and Finn might make the Ex-

hibit B contract which included the direct agreement that those who became certificate holders:

(a) Should have no interest, legal or equitable in the property or assets of the partnership (Ex. B., Sec. 6, Rec. 29);

(b) Should acquire no interest whatever in any proceeds arising from the partnership, until after the same were *segregated and separated therefrom*. (Ex. B, Secs. 1, 2, 4, 6; Rec. 26, 27, 28, 29);

(c) Should have no control whatever over the management of the business of Marcuse & Co.

An examination of Exhibit B also discloses that Hecht and Finn recited that they had theretofore become special partners in the limited partnership created by Exhibit A. Under that document (Exhibit A) it was provided that they should have no liability whatever beyond their contributions of \$95,000 each (Ex. A, Secs. 2, 14; Rec. 20, 23), and should have no control over the partnership operations. (Rec. 20 *et seq.*) They were to receive six per cent on their invested capital, and in addition thereto a certain proportion of the net profits which might arise from the operations of the limited partnership. (Ex. A., Secs. 12, 13; Rec. 22, 23.) On dissolution they were to receive a share of the assets in the proportion to which they should be entitled to the same. (Ex. A, Sec. 19; Rec. 25.)

Hecht and Finn declared in Exhibit B (Rec. 26) that they were holding their interest as limited partners upon trusts and conditions which were in substance as follows:

That whenever profits accrued to them as special partners, or whenever proceeds of liquidation *after* the special partnership was dissolved accrued to them, these moneys would be paid over to Chicago Title and Trust Company and be by it distributed in 380 parts or shares among those who from time to time held certificates from the trust company authorizing them to receive such share distributions. (Ex. B, Secs. 1, 2, 3, 6; Rec. 26, 27, 28.)

These certificates were assignable (Ex. B, Secs. 3, 6; Rec., 27, 29), and anyone might become a holder thereof (as in fact from time to time they did Rec., 606, 610, 611, 640), in any number of shares. It was provided that the certificate holders had no rights or interest whatever in the assets, or in the profits, of Marcuse & Co. *as such*, or in its operations, and they became entitled to nothing whatever except only the profits, and the proceeds of liquidation *after* the same had been segregated from the partnership property and paid over to the trust company on behalf of the special partners. (Ex. B, Secs. 1, 2, 4, 6; Rec. 26, 27, 28, 29.)

Under Exhibit B the certificate holders had nothing to do with the management of the business of Marcuse & Co. There is no provision for meetings of the certificate holders or for the election of trustees by them. *The certificate holders had no authority to remove trustees or to fill vacancies among the trustees.* In the event of the death of both trustees, the holders of certificates representing a majority of the outstanding shares may, by an instrument or instruments in writing signed by them, designate a successor trustee, *acceptable to and approved by the general partners*, which simply means that they may agree with the general partners upon a successor trustee. (Ex. B, Sec. 9; Rec., 30, 31.)

The trustees had power to appoint auditors of the partnership business and if the holders of certificates representing a majority of the outstanding shares should so indicate the trustees were to revoke the appointments of such auditors and appoint those thus designated by the certificate holders. (Ex. B, Sec. 5; Rec. 28, 29.) Should such auditors at any time certify in writing to the trustees or to the certificate holders that the business of the co-partnership was not being properly

conducted or that Marcuse (general partner) was neglecting the business or by reason of incapacity was not properly managing the business, the trustees should, upon the written direction of the holders of certificates representing a majority of outstanding shares, take steps to dissolve the copartnership. (Ex. B, Sec. 5, Rec., 28, 29.)

Upon the resignation of the trust company, a successor trust company might be appointed by an instrument or instruments in writing, signed by certificate holders representing a majority of the outstanding shares. (Ex. B, Sec. 9; Rec., 31.) Such a majority might in writing direct the trustee to maintain a suit for the dissolution of the copartnership, or for any relief against it, or to protect or enforce distribution of the trust fund. Ex. B, Sec. 7; Rec., 30.) The certificate holders had access to the books of account of the firm of Marcuse & Co., and were entitled to receive from the trustees an annual inventory and account and monthly trial balances covering the business and assets of the copartnership, as and when the same were obtained by the trustees from the general partners. (Ex. B, Sec. 5; Rec., 29.)

It is contended by these respondents that under this document Hecht and Finn stood in the relation of *trustees*, and those who from time to time might purchase and hold certificates stood as *cestuis que trust*, and that this relation and no other was created by Exhibit B.

Petitioners assert that Exhibit B does not create a trust.

Conclusive answer to this will be found in *Crehan v. Megargel*, 192 N. Y. S. 290, 234 N. Y. 67, 136 N. E. 296.

Particular attention is again directed to Section 6 of Exhibit B heretofore quoted (see this brief, p. 7).

In essence the adjudicated cases hold that where the trustees, as here, have control of the capital fund, and the rights of the shareholders are passive and receptive, and they have no control or direction of the acts which the trustees shall perform, or the manner in which they shall conduct the fund or business from which the distributed amounts are arising during the continuance of the relation, then, and in such case, *the relation is that of trustee and cestuis que trust, and not of partners.*

Tested by the authorities, Exhibit B did not create a *partnership* between Hecht and Finn on the one hand and the certificate holders on the other, nor between the certificate holders and Marcuse and Morris.

Among the cases which hold this are:

Crehan v. Megargel, 192 N. Y. S. 290, 234 N. Y. 67; 136 N. E. 296.

Williams v. Milton, 215 Mass. 1, 10, 11; 102 N. E. 355, 358, 359.

Crocker v. Malley (1919), 249 U. S. 223, 232, 233.

Mayo v. Moritz, 151 Mass. 481; 24 N. E. 1083.

Johnson v. Lewis, 6 Fed. 27, 28.

Wells-Stone Mercantile Co. v. Grover, 75 N. W. (N. Dak.) 911, 916.

Jones v. Gould, 209 N. Y. 419, 424.

Crehan v. Megargel, *supra*, is the latest case of which we have knowledge and we submit it is conclusive.

The New York courts held that the trust instrument in question created a trust and that the certificate holders were not "persons interested" in Megargel & Co. within the meaning of the statute in question or liable as partners.

The Court of Appeals said (234 N. Y. 77):

"We do not think that they did contribute special capital to the partnership in any such manner or with any such result as is claimed. Clearly they did not contribute capital in the manner, under the conditions and with the results, contemplated by the statute as necessary to establish the status of a special partner."

Again, p. 78:

"As between them and the other members of the copartnership they made no contribution of capital, signed no partnership agreement and established no relationship with the copartnership, but were expressly debarred therefrom, and secured no benefit from such copartnership except as it might come in an indirect way through accountability of the special partner for the profits, which he had received from the copartnership."

Again, p. 79:

"The trust is an insurmountable barrier raised between them and the partnership and separating them from an interest in its affairs, and it seems to us to be a valid arrangement and to come within the principles which have been approved both by eminent text writers and the decisions of various jurisdictions in the case of so-called commercial or business trusts as substitutes for business corporations."

The trust agreement passed upon in the case of *Crocker v. Malley supra*, and held by this court to create a trust and not a partnership is of particular interest in this case because similar in principle to Exhibit B. It is set forth in the appendix, p. lii.

In the trust agreements examined by the courts in the cases cited *supra* (as also in Exhibit B), there was no provision for an associating together of certificate holders in meetings, but recent decisions in the following cases hold that even though a trust agreement provides for meetings of certificate holders for the election

of trustees, it does not, by reason of such provision, create a partnership.

Home Lumber Company v. Hopkins, (1920),
190 Pac. (Kans.) 601, 604.

R. I. Hospital Trust Co. v. Copeland, 98 Atl.
(R. I.) 273, 279.

Space forbids that we analyze all of the cases cited *supra*, in connection with this branch of the case, but they are all in point and clearly sustain our contention as to the status of the certificate holders under Exhibit B and establish beyond question that these certificate holders were not partners either limited or general in the firm of Marcuse & Co.

The court should have in mind the three positions occupied by Hecht and Finn. First, they were limited partners under Exhibit A. (Rec., 20.) Second, they were trustees under Exhibit B, and third, they were certificate holders under Exhibit B. (Rec., 26.) As certificate holders their positions differed vitally from those which they occupied as trustees and as limited partners. Their status as such trustees and as such partners was definitely fixed by the terms of Exhibits A and B, but they might at any time cease to be certificate holders by the transfer of their certificates (Exhibit B, Sections 3, 6; Rec., 27-29) and their status as trustees and limited partners was in no wise dependent upon their continuing to be certificate holders.

There is no decision in Illinois in any way in conflict with the principles laid down in the cases cited in support of the proposition that the Hecht-Finn Trust Agreement did in fact create a trust and did not create a partnership relation of any kind. In the court below opposing counsel apparently relied on *Robbins v. English*, 24

Illinois, 387. In this case members of a real estate firm made a declaration of trust as to certain real estate for the benefit of Chicago Loan Company, under which name a number of persons had associated themselves together and entered into written articles of association between themselves and members of the firm. In considering the competency of testimony of certain witnesses the court remarked that joint stock companies are nothing more than partnerships. It does not appear from the case what the powers of the shareholders were under the articles of association with reference to the control of its affairs, but the court treated it as a joint stock company. For aught that appears in the opinion, the provisions of the articles of association were such that the court was correct in so doing. Moreover, there is no indication in the opinion that anyone questioned that the articles of association were such as to make the shareholders partners.

Pettis v. Atkins, 60 Ill. 454, *People v. Rose*, 219 Ill. 446 and *Fougner v. First National Bank*, 141 Ill. 24, are other cases similarly relied on. In the first case no trust question was raised and from the opinion it is clear that the organization involved was a joint stock company controlled and managed by the stockholders, associating and acting together at meetings and electing officers and directors who were their agents. In the *Rose* case certain persons brought mandamus proceedings against the Secretary of State because he refused to let them incorporate under the name United States Express Company, because the name was already being used by a joint stock company. A demurrer to his answer admitted that the old company was a joint stock association and the court so treated it (as it was bound to do) and pointed out further that it was unable to say what the terms of the articles of association were be-

cause not set forth in the pleadings. In the *Fougner* case it was held that one who claimed to be a creditor and employee was in fact a partner because of the character of the work done and authority exercised by him.

Petitioners point to Section 5 of Exhibit B (Rec., 28, 29) which gave the holders of trust certificates the right in person or by agent at reasonable times to examine the partnership books of account and which provided that the trustees (Hecht and Finn) should at least once a year furnish to the certificate holders an inventory and account of assets, income, profits, losses sustained, liabilities incurred, etc., of said partnership, but this is no evidence of partnership.

Where one is to receive a percentage of profits as compensation for services rendered or for the use of money or property in a business he may maintain a bill in equity for an accounting.

Channon v. Stewart, 103 Ill. 541, 543.

Street v. Thompson, 229 Ill. 613, 618, 619.

Inasmuch as such a person is interested in knowing whether profits have been made and, if so, what they are, because his compensation is to come from profits and it cannot be told what his compensation is to be without such information, *he may have an accounting in equity, but he is not a partner*. Would it not be absurd to hold that a provision in a contract designed to give him what the law gives him, makes him a partner, when, if the contract contained no such provision, and he procured an examination of the books through the aid of the court, he would not be a partner, or that a provision in a trust instrument that he shall have access to the partnership account books from time to time in order to know how the business is being managed makes him a partner.

In *Crehan v. Megargel*, *supra*, the trust instrument provided that in case of the death of Ralph G. Megargel, the trustee and limited partner, and the dissolution of that firm, the receipt-holders were entitled to receive from the firm the residue, if any, of the moneys to which their trustee would have been entitled if living. Observe that in this case the residue of the assets belonging to the limited partner were not to be paid to the trust company and distributed by it to the registered receipt-holders as in Exhibit B, but the receipt-holders were entitled to receive such residue of the assets direct from the firm, and as to this arrangement the Court of Appeals of New York said (234 N. Y. 78):

"But this was the arrangement which equity would have enforced without any specific agreement and did not change the effect of their agreement."

In *National Surety Company v. Winslow*, 173 N. W. (Minn.) 181, in which the court held that the contract in question did not create a partnership. The court said p. 182:

"The whole scope and effect of the various stipulations of the contract by which interveners were given a supervisory control over the performance of the contracts, to facilitate which the advances or loans were made, was in protection of their granted right to have the money so advanced devoted to the particular purpose, and not diverted to the performance of other contracts, in which interveners had no interest, or the personal uses of the defendant."

Inasmuch as profits earned by Marcuse & Co. were to be paid to Chicago Title & Trust Company as a trust fund the beneficiaries of that trust were entitled to know that the business was being honestly conducted and the profits honestly divided.

The provision in Exhibit B that they should have that right did not change their legal status.

In *Williams v. Milton*, *supra* (215 Mass. 1, 102 N. E. 355), the trust instrument provided that the trustees should render an account annually or oftener if convenient to them and should upon request deliver or mail a copy to each *cestui que trust*.

In *Crocker v. Malley*, *supra* (249 U. S. 223), the trust instrument provided that the trustees should at all times keep full and proper books of account and records of their proceedings and doings and should at least annually render account of the trust to any beneficiary requesting the same. (See Section 7, Appendix A to our main brief, p. 109.)

Under Section 5 in Exhibit B (Rec., 28, 29) it is made the duty of the trustees (Hecht and Finn) to appoint persons or firms to act as auditors of the business of Marcuse & Co., and this paragraph provides that such trustees might and would from time to time revoke such appointments and appoint such other persons or firms as the holders of certificates representing a majority of the outstanding shares should in writing designate and require.

What we have said as to the right of the holders of certificates to examine the books of account is clearly applicable here. This provision was simply designed to procure the selection of such auditors as would be satisfactory to the certificate holders. It had nothing to do with the management or control of the business but related solely to the audit of the firm's books of account.

Petitioners point to the further provision in Section 5 of Exhibit B (Rec., 28, 29) to the effect that if the auditors should certify in writing that the business of the firm

was not being conducted in a safe, conservative or judicious manner, or that Marcuse was neglecting said business, or was incapacitated, and by reason thereof, not properly managing said business, such auditor's certificate should be conclusive and binding evidence of the facts therein recited not only as between the trustees and the certificate holders, but as between the trustees and the general partners, and the trustees should upon the written direction of the holders of certificates representing a majority of the outstanding shares, cause steps to be taken to dissolve said copartnership, and it is argued that this was a provision vesting control in the certificate holders.

This provision gave no proprietary interest or ownership as principal in the business nor control over its conduct and management. There is a wide difference between controlling the conduct and management of a business, and taking steps to dissolve or terminate it. If Marcuse & Co. through the management of its general partners, and of Marcuse particularly, was not conducting the business in a proper manner, or if Marcuse should become incapacitated to properly manage the business it was the duty of Hecht and Finn to take steps to dissolve and wind up the partnership, and if they did not discharge their duty in that regard, the beneficiaries under Exhibit B could procure relief through a court of equity. This provision is in nowise inconsistent with our contention as to the character of Exhibit B and the position of the certificate holders, and has no tendency to create a partnership.

What we have just said is equally applicable to Section 7 of Exhibit B. (Rec., 29, 30.)

Section 9 of Exhibit B provides that in the event of the death of both trustees (Hecht and Finn) the holders of certificates representing a majority of the shares, by an instrument or concurrent instruments in writing signed by such certificate holders shall designate a successor trustee *acceptable to and approved by* the general partners and that such successor trustee shall forthwith become the special partner in the place and stead of the deceased surviving trustee, etc.

This provision could be eliminated entirely from Exhibit B without in anywise destroying the completeness of that document. It amounts to no more than a provision that upon the death of both Hecht and Finn the then certificate holders might agree with Marcuse and Morris upon the selection of some person to step into the shoes of Hecht and Finn and succeed them as trustee under Exhibit B, and as special partner under Exhibit A and thus acquire all the rights of Hecht and Finn and assume all their obligations as provided in Exhibit A and Exhibit B, and this they could do without any provision to that effect in Exhibit B.

In the trust instrument involved in *Crehan v. Megargel, supra*, the provision was made between the receipt-holders that if the firm of Megargel & Co. should be terminated by the death of Megargel within the period of five years, which was to be the life of that firm, on the consent of the surviving members of the partnership and the agreement of not less than 51 per cent in amount of the receipt-holders a new limited or special partnership might be formed with a new limited or special partner, nevertheless the New York courts held that the relationship of the receipt-holders was a trust relationship and that they were not partners.

The certificate holders could not remove the trustees.

They could not fill vacancies. The trustees did not serve for fixed terms with power in the certificate holders to elect their successors. The certificate holders could not adopt rules and regulations for their government or control. No meetings were provided for at which certificate holders, by vote, could exercise any authority or control over the trust fund or the trustees or the business of Marcuse & Co. It is true that Section 5 of Exhibit B. (Rec., 28, 29) provided that the trustees should appoint such persons or firms as auditors as the holders of certificates representing a majority of the outstanding shares should in writing designate and require. Section 7 (Rec., 29, 30) provided that trust certificate holders representing a majority of the outstanding shares might request the trustees to bring suit under certain conditions and Section 9 provided that, in the event of the death of both trustees, certificate holders representing a majority of the shares, by an instrument or concurrent instruments in writing, might designate a successor trustee *acceptable to and approved by* the general partners. *These provisions provide only for individual action,—not for meetings of certificate holders or for any associating together.*

In *Williams v. Milton* (215 Mass. 1, 102 N. E. 355) the trust instrument provided that the trustees might *with the consent of three-fourths in interest* of the beneficiaries under the trust, alter or add to the trust instrument or terminate the trust. The court said that the giving or withholding of such consent *was not to be had in a meeting, but was to be given by them individually and that no meetings were provided for under that trust instrument.*

Referring to the Wachusett Realty Trust (Appendix p. lii), which was the instrument involved in *Crocker v. Malley*, 249 U. S. 223, it was provided in Section 11 that

any vacancy in the office of the trustee should be filled by remaining trustees by an instrument in writing signed by them *and assented to in writing by the holder or holders of a majority in amount of the beneficial interests therein*; and it was provided in Section 13 that the terms and provisions of the trust might be modified by instruments in writing signed, sealed and acknowledged by the then trustees and *assented to in writing by a majority in interest of the beneficiaries, etc.*

This court in referring to these provisions (p. 232) quoted from *Williams v. Milton, supra*, to the effect that *the giving or withholding of assent was not to be done in a meeting, but by the certificate holders individually.*

In other words, the provisions of Exhibit B relative to action by the certificate holders representing the majority of outstanding shares, *is not the equivalent of a provision for an associating together in meetings and acting therein, and is not the control contemplated by law which certificate holders must have over trustees to constitute a partnership.*

How can it be said that the certificate holders under Exhibit B were the masters of the trustees and the trustees merely agents? How can it be said that the certificate holders were principals in the business of Marcuse & Co. on their own behalf and agents as to all others concerned? What could they do to bind Marcuse & Co.,

They could not hire or discharge a clerk.

They did not have the slightest control over any one in the employ of that firm.

They could not have purchased a postage stamp and obligated Marcuse & Co. to pay for it.

They could not give an order for a customer which any one connected with the management of the business was under any obligation to carry out.

They had no authority to bind Marcuse & Co. directly or indirectly in any way in the conduct and management of the business of the firm, and its members had no authority to bind them by anything done or any obligation incurred in connection with the management and control of the business. The relationship of principal and agent did not exist between the certificate holders and the trustees under Exhibit B, or between the certificate holders and the members of the Marcuse & Co.

Clearly under Exhibit B Hecht and Finn became trustees, but as tersely said by this Court in *Taylor v. Davis*, 110 U. S. 330, 334:

“A trustee is not an agent.”

SHARING PROFITS.

The rights of Hecht and Finn in and to profits of Marcuse & Co. and proceeds upon liquidation could be made the subject of a trust. Hecht and Finn made them the subject of The Hecht-Finn Trust by the execution of Exhibit B.

Instead of Marcuse & Co. paying profits or assets in the distribution of capital direct to Hecht and Finn, and Hecht and Finn holding the trust fund for distribution or paying it over to Chicago Title & Trust Company, payments into the trust fund were to be made direct to Chicago Title & Trust Company by whom that fund was to be taken and distributed. Upon the payment by Marcuse & Co. to Chicago Title & Trust Company of profits or of a portion of the capital, upon liquidation, the moneys thus paid at once became a part of this trust fund and were to be distributed *as such* by Chicago Title & Trust Company among the certificate holders in proportion to the number of shares held by each of them. (Sec. 2, Ex. B, Rec., 26, 27.) The certifi-

cates issued under Exhibit B provided that the certificate holder should be entitled from time to time to distribution *from said trust fund* in the manner and upon the terms and conditions set forth in Exhibit B. (Rec., 26, 27.)

Counsel argue that the certificate holders shared in the profits of Marcuse & Co. and that this made them partners. To this we reply:

The sharing of profits as profits in a business is not a conclusive test of partnership.

Niehoff v. Dudley, 40 Ill. 406, 410.

Smith v. Knight, 71 Ill. 148, 151.

National Surety Co. v. Townsend Brick Co., 74 Ill. App. 312, 315; affirmed 176 Ill. 156, 161.

Sample v. Farson, 174 Ill. App. 334, 338.

Williams v. Fletcher, 129 Ill. 336.

The fact that a person shares in the profits of a concern is *prima facie* evidence that he is a partner, but that presumption yields to proof of a contrary intention.

Even if it were conceded (which it is not) that the certificate holders share in the profits of Marcuse & Co., as profits, the result would be merely to raise the presumption of partnership, which is effectively rebutted by the language of Exhibit B, which shows conclusively that the parties never intended to thereby create a partnership.

The sharing in profits which is *prima facie* one of the evidences of partnership must be a sharing in profits *as profits*. Concede that the trust fund which was distributed among the certificate holders was made up of profits paid by Marcuse & Co., it is not the fact that the certificate holders shared in profits *as profits*. These funds in the hands of Chicago Title & Trust Company *were no longer profits*, but constituted a trust

fund, and it was the *trust fund* that was distributed among the certificate holders.

If it be said that the distinction which we here make is not substantial, we reply that it is as firmly established in the law as the solemn decisions of courts of final authority can establish anything.

Receiving a percentage of profits as compensation for the hire or use of money does not make one a partner.

Smith v. Knight, 71 Ill. 148, 150, 151.

Niehoff v. Dudley, 40 Ill. 406, 409, 410.

Cassidy v. Hall, 97 N. Y. 159, 168.

James Bailey Company v. Darling, 111 Atl. (Me.), 410, 412, 413.

Receiving a percentage of profits as compensation for services does not make one a partner.

National Surety Co. v. Townsend Brick and Contracting Co. 74 Ill. App. 312, 315; affirmed 176 Ill. 156, 161.

Briggs v. Kohl, 132 Ill. App. 484, 486, 487.

Cassidy v. Hall, 97 N. Y. 159, 168.

Merchants National Bank v. Barnes, 52 N. Y. Supp. 786, 789.

Jackson v. Haynie's Admr. 109 Va. 365, 56 S. E. 148.

Holbrook v. O'Berne, 9 N. W. (Ia.) 291.

Receiving a percentage of profits as compensation for the use of property does not make one a partner.

Parker v. Fergus, 43 Ill. 437, 441.

In the foregoing cases the courts made it clear that the parties sought to be held as partners did not receive a percentage of profits *as profits* but as compensation for the hire or use of money or property or for services rendered, as the case might be.

The expression "profits as such" or "profits as profits" and the distinction which these expressions indicate appear in many cases.

Kelly v. Gaines, 24 Mo. App. 506, 514, 515.

In re Haines & Co. Estate, 176 Pa. 354; 35 Atl. 237, 238.

Merchants National Bank v. Barnes, 52 N. Y. Supp. 786, 789.

Parker v. Fergus, 43 Ill. 437, 441.

Burnett v. Snyder, 81 N. Y. 550, 555.

Briggs v. Kohl, 132 Ill. App. 484, 486.

James Bailey Company v. Darling, 111 Atl. (1920, Me.), 410, 413.

In *Kelly v. Gaines*, *supra*, the court said (p. 514):

"The expression 'profits, as such,' used in the case last cited and referred to, means profits before they are ascertained and divided, and not profits which, after they have been ascertained, make the fund for, and form the measure of the payment, to the alleged partner on account of his interest." (Citing Parsons on Partnerships (2 Ed.), Chap. 6, Sec. 2, p. 73.

"Under the facts hypothetically stated in the instruction given for the plaintiffs, as constituting Minter a partner, he had no interest in the profits while accruing; his interest began only when the profits had been ascertained; until then he had no interest in or control over them. HE HAD NO INTEREST IN THE PROFITS AS SUCH; he simply had an interest in the profits as constituting the fund out of which he was to receive the compensation of \$10 on each car-load of meal, guaranteed by Gaines. Such profits thus paid to him were paid to him as a compensation for furnishing the corn to Gaines, and were not paid to him as Gaines' partner. There was no communion of profits between Minter and Gaines; the interest in the profits was not mutual; Minter had no interest in the profits as a principal trader."

A party sought to be held as a partner must be inter-

ested as owner in the resulting profits *while they are undivided and remain as profits.*

Jackson v. Haynie's Adm'r. supra (56 S. E. 148).

There must be a *proprietary interest as principal trader* in the profits *as they are earned and before division.*

Burnett v. Snyder, supra, 81 N. Y. 550, 555.

James Bailey Company v. Darling, supra, 111

Atl. (Me.) 410.

Ruling Case Law, Vol. 20, pp. 829, 830.

In the Darling case, *supra*, the Supreme Court of Maine said (p. 413) that for one to share in profits *as profits*

"is to stand in such relations to the business that the profits, or a share of them, are in his ownership as they accrue. *He must have a proprietary interest in each dollar of profits as it is earned*, so that he then has a right of possession or control of it for the purpose of retaining his share. This involves an ownership of an interest in the business that produces the profits."

Under Exhibit B, whether construed alone or in connection with Exhibit A, Vette, Zuncker, Regensteiner, and the two Studebakers had no proprietary interest as principal traders in the profits of Marcuse & Co. as they were being earned and before division.

Section 6 of Exhibit B (Rec., 29) expressly provides

"that the holders of trust certificates shall have no right, title or interest *directory, proprietary or otherwise* in the said copartnership or in or to the property or assets of said copartnership, the entire right, title, and interest therein and thereto, both legal and equitable, being vested in the trustees" (Hecht and Finn).

And this same section of Exhibit B expressly provides

that the interest of each and every holder of trust certificates shall consist solely of the right to receive his proportionate share of the net part or parts of the *trust fund* from time to time payable to the trust company thereunder, etc. Moreover, by the very terms of the trust certificates the right acquired by the certificate holders thereunder and thereby was to be "entitled from time to time to distribution from *said trust* in the manner and upon the terms and conditions in said declaration of trust set forth"—referring to Exhibit B. Furthermore, Exhibit B does not provide that the certificate holder shall share in the profits of Marcuse & Co., nor that they shall be paid a stated percentage of such profits. The share or percentage of such profits due from time to time to Hecht and Finn as members of Marcuse & Co. by the direction of Hecht and Finn contained in Exhibit B (assented to by the members of Marcuse & Co.) was to be paid to a trust company as a part of a trust fund and what the trust certificate holder was to get was his proportionate share of this trust fund depending upon the number of shares owned by each of them respectively at the time a distribution was made out of this trust fund.

The mere fact that a person is interested jointly with others in the income arising from a business, does not make him their partner. In *Crehan v. Megargel* (234 N. Y. 67); *Crocker v. Malley* (249 U. S. 223), and in *Williams v. Milton* (215 Mass. 1), and in the other trust cases cited, the certificate holders were jointly interested in the profits of an enterprise. They were not partners. In the subpartnership cases cited (cited hereafter, pp. 111, 112), the subpartners were interested in the profits which would accrue to the partners with whom they had contracted. They were not partners.

National Surety Company v. Winslow, 173 N. W. 181,

decided by the Supreme Court of Minnesota in June, 1919, was a case where the court held that the relationship was not that of partners, but of creditor and debtor. It was argued that the parties were engaged in a joint adventure. The court said (p. 183):

"The contract in question clearly creates no such relationship [partnership].

The terms thereof expressly exclude interveners from all liability for the performance or failure to perform the contracts, and expressly declares that defendant shall have no authority to bind them by contract or otherwise in respect thereto. Interveners assume none of the burdens of performance, or the control thereof, other than such as they may deem necessary to prevent a wrongful diversion of the funds advanced, and for a breach of any of the contracts they would in nowise be liable either jointly with defendant or otherwise. In short, the only interest interveners have in the contracts or the performance thereof is the stipulated share of the net profits. But that does not create a copartnership or a joint adventure."

This was a case where the interveners advanced money to the defendant to enable him to carry out certain construction contracts he had. They reserved certain rights of control. Their compensation for the use of the money was to be a percentage of the profits, etc. The contract before the court by its terms excluded them from liability for the performance or failure to perform the construction contracts by the defendant.

SHARING OF LOSSES.

One of the tests of partnership is that of *sharing losses*. If a contract provides for sharing profits and is *silent* on losses, then a presumption arises that losses will be shared; but where the contract affirmatively provides that a party *shall* not share losses, then such party is not a partner.

In *Baldwin v. Patrick*, 91 Pac. (Colo.) 828, it is said (p. 829):

"In *Lee v. Cravens*, 9 Colo. App. 272, 288, 48 Pac. 159, 164, it is said: 'Another incident of a partnership is the sharing of losses by the partners. The partnership contract may say nothing about losses, but the right to participate in profits implies a corresponding liability for losses; and it has accordingly been held that an agreement for the division of profits is admissible in evidence as tending to show a partnership. *Where, however, an agreement between two or more persons, in relation to the prosecution of an enterprise, provides that one of their number shall incur no risk, and be chargeable with no loss, the agreement is not one of partnership.*' "

The same doctrine is laid down in

Stafford v. Sibley, 17 So. (Ala.) 324, 325.

Clark v. Barnes, 34 N. W. (Iowa), 419, 420.

Ruddick v. Otis et al. 33 Iowa, 402.

Winter v. Pipher, 96 Ia. 17; 64 N. W. 663.

Grantham v. Connor, 154 Pac. (Kan.) 246, 247.

Section 6 of Exhibit B provides that the holders of trust certificates by the acceptance thereof shall not be construed to have assumed any liability whatsoever with respect to said trust or said copartnership. (Rec., 29.) In other words, they are not liable for losses.

A provision against liability for firm obligations (Section 6 of Exhibit B clearly contains such a provision) excludes the idea of partnership.

Niehoff v. Dudley, 40 Ill. 406, 408, 409.

Sample v. Farson, 174 Ill. App. 334, 338.

National Surety Co. v. Winslow, *supra*, 173 N. W. (Minn.) 181, 183.

AGENCY AS A TEST OF PARTNERSHIP.

Another crucial test of partnership is *agency*. Each partner is an agent for each of the others, *and can bind such others by his agreement*, within the scope of the firm's business. If such agency does not exist, the parties are not partners.

Fougner v. First Nat. Bank of Chicago, 141 Ill. 124, 132.

Pierpont v. Lanphere, 104 Ill. App. 232, 237.

Beecher v. Bush, 45 Mich. 188; 7 N. W. 785; 40 Am. Rep. 465.

Brotherton v. Gilchrist, 144 Mich. 274; 107 N. W. 890, 891.

Parchen v. Anderson, 5 Mont. 438; 5 Pac. 588, 599; 51 Am. Rep. 65.

It is clear that, under Exhibit B, Hecht and Finn could not bind the successive certificate holders as the agents of such holders. Still less could it be said that the certificate holders could bind Hecht and Finn, by their acts and agreements.

By whatever test is applied to Exhibit B, it is clear that Hecht and Finn, *as trustees*, were not *partners* with the certificate holders.

How could Hecht and Finn be partners with the respective and consecutive certificate holders? Regensteiner bought a certificate for fifty-seven (57) shares and paid Hecht and Finn for it. Then he transferred twenty (20) shares to Grollman, who took a new certificate. Is Grollman a partner of Hecht and Finn? And if Grollman should sell or hypothecate his twenty (20) shares to the First National Bank of Chicago, would it become a partner of Hecht and Finn? And still further (paralleling the Studebaker situation), would its di-

rectors, and its stockholders, *as individuals*, also be partners of Hecht and Finn?

Hoffman bought a certificate for one hundred (100) shares. He paid \$50,000 for it. He was acting for the Chicago Title and Trust Company, as trustee, and the \$50,000 was its money, being part of a *fund* of money and securities, to which it held legal and equitable title, as trustee.

He transferred his certificate to Gardner, an officer of the Chicago Title and Trust Company. Is Gardner a partner?

Gardner held the certificate as a *part* of the fund bought, paid for, and owned, by the Chicago Title and Trust Company, which, as trustee, holds the legal and equitable title to the purchased certificate. Is the Chicago Title and Trust Company a *partner*?

Finally, George M. Studebaker and Clement Studebaker Jr. (or more probably various other persons, depending on the facts of life and survivorship), *at the expiration of the Studebaker Bros. Trust in 1942*, will receive, in varying and uncertain proportions, the *securities* and legal or equitable ownership of the fund. They never bought and do not hold a certificate under *Exhibit B*.

Yet it is contended that George M. Studebaker and Clement Studebaker, as individuals, should be held to be *partners*. Are the other beneficiaries of Studebaker Bros. Trust also partners?

Neither of them ever agreed, orally or in writing, to be a general partner, or a limited partner, or any kind of a partner with any one.

Neither of them ever bought, paid for, owned or held, any certificate under Exhibit B.

We contend that under the terms of Exhibit B, and under every legal test applied to it, Hecht and Finn were trustees, and the certificate holders were *cestuis que trust*, and were not partners with Hecht and Finn or with each other and of course not partners with Marcuse and Morris, and of course that the Studebakers, who are not even certificate holders, were not partners.

Petitioners (Brief, p. 39) point to Hecht's Exhibits 2, 3, 4 and 5 and characterize these documents as "one of the strongest proofs in the record" that all of the respondents never waived from April 1st until after June 30th in their intention to form a limited partnership and to be all members of that partnership.

Petitioners are pressed hard for evidence to sustain their claim when they make such a contention with reference to these exhibits.

HECHT'S EXHIBITS 2, 3, 4 AND 5.

Counsel for Hecht and Finn introduced on the hearing in the trial court these four documents: Hecht Exhibits 2 (Rec., 665), 3 (Rec., 660), 4 (Rec., 667), and 5 (Rec., 668). Hecht Exhibits 2 and 3 had been canceled by destroying the signatures. These two exhibits were dated March 28, 1917. When the four exhibits were offered in evidence counsel for these respondents objected to them upon the ground that Hecht Exhibits 2 and 3 showed upon their face that they were canceled documents and that Hecht Exhibits 3 and 4 which were dated June 30, 1917, were wholly immaterial. (Rec., 664.) They were admitted in evidence. (Rec., 665.) Hecht Exhibit 2 was an agreement between Marcuse and Vette, and Hecht Exhibit 3 was an agreement between Marcuse and Zuncker. They were precisely alike except as to the

amounts of money stated in each. It will be sufficient, therefore, to note Hecht Exhibit 2, the agreement between Marcuse and Vette. Observe that these agreements were dated March 28, 1917, or five days before the execution of the documents in Colonel Foreman's office. The agreement discloses that Marcuse had requested Vette to become a special partner in the firm of Marcuse & Co., and that Vette was willing to do so. In this contract, Marcuse agreed that he would at any time after the expiration of one year from the date of the execution of the special partnership contract, if Vette so requested, etc., purchase Vette's interest in that business upon the terms set forth in this contract, and would indemnify Vette against any and all liability on account of any of the firm obligations. In other words it was agreed that if Vette sold his interest as special partner in the business of Marcuse & Co., Marcuse would protect Vette against liability on account of any firm obligations.

This agreement provided further that if, after the termination of the copartnership known as Marcuse & Co., Marcuse should continue in the brokerage business, Vette could, upon contributing to the capital of that firm, become interested in the business to the extent provided in this agreement. *It was not an obligation that Vette would, but merely that he could, if he so desired.*

Both of these agreements related to the partnership then in contemplation, and which led to the signing of the documents in Foreman's office on April 2nd following, which were later abandoned, and both of these agreements had been canceled. They have no place in this case and are wholly immaterial for any purpose. The court should have sustained the objection to their introduction.

Hecht Exhibits 4 and 5 bearing date June 30, 1917 (Rec., 667-670) were executed with reference to Exhibits A and B. Hecht Exhibit 4 was an agreement between Marcuse and Zuncker, and Hecht Exhibit 5 between Marcuse and Vette. Both are alike except as to the amount of money stated in them. We comment on the Zuncker agreement. This agreement recites in its preamble that pursuant to an agreement (Exhibit A) a special partnership had been entered into between Marcuse, Morris, Hecht and Finn, and that Hecht and Finn had executed their certain declaration of trust (Exhibit B), etc.; that Marcuse had requested Zuncker to pay \$25,000 into said trust fund and accept certificates of trust therefor which Zuncker had agreed to do. It was then provided that at any time after April 2, 1918, upon Zuncker's request Marcuse would purchase his trust certificate paying therefor the amount as provided in this agreement; that Marcuse would indemnify and save Zuncker harmless against any and all liability on account of any obligations of Marcuse & Co.; and that Marcuse agreed that if, after the termination of the business of the copartnership known as Marcuse & Co., he should continue in the brokerage business Zuncker might, at his option, contribute to the capital of that new business \$25,000 as provided in this agreement. *There was no obligation on Zuncker's part to do so. The agreement merely gave him that right.*

What Hecht's Exhibits 2 and 3 do indicate is that Marcuse had difficulty in persuading Vette and Zuncker to become parties to the limited partnership agreement which was abandoned. Manifestly, in order to procure their consent he had to agree with them that if later they so desired he would purchase their interest as limited partners in the firm and protect them from any possible liability.

We have already pointed out that after the plan for a limited partnership with more than two limited partners was abandoned and Marcuse and Stein started out to organize a limited partnership with but two limited partners, Marcuse talked to Zuncker, and Zuncker refused to have anything to do as a limited partner with the new firm which Marcuse and Stein were then endeavoring to organize, and that in this regard he represented Vette also. (Rec., 547.) Later came the question whether Zuncker and Vette would become certificate holders under Exhibit B. Manifestly, Marcuse had difficulty in persuading them to do this and in order to get them to become certificate holders under Exhibit B had to agree with them as he did by Hecht's Exhibits 3 and 4 that if they so desired he would purchase their certificates from them, and, if he did, protect them from any possible liability, etc.

We do not think these exhibits are open to the inference or construction which petitioners seek to draw from them or place upon them. Marcuse by the management of the business of Marcuse & Co. might demonstrate not only that the business was a safe business but a profitable one. At the expiration of the term for which the partnership first was to be organized and later was organized it might have become apparent that a brokerage business conducted by Marcuse was a safe and profitable business in which to invest funds, and in the event that Marcuse should organize another firm and therefore continue the business, these exhibits were designed to give Vette and Zuncker the right to invest in that business if they saw fit to do so. There was no obligation on them to do so.

These documents we think were wholly immaterial and should not have been admitted in evidence. We cannot see how they have any bearing or throw any light upon the points in controversy in this case.

B.

IF THE HECHT-FINN TRUST MADE THE CERTIFICATE HOLDERS PARTNERS WITH HECHT AND FINN (WHICH IS DENIED) SUCH PARTNERSHIP IS A SUBPARTNERSHIP AND SUBPARTNERS ARE NOT LIABLE AS PARTNERS.

If Exhibit B makes Hecht and Finn, as trustees, or certificate holders, partners with these respondents (which is denied), such partnership is between themselves alone and is in law a *subpartnership*. As subpartners these respondents are not in law members of Marcuse & Co.

Hecht and Finn, as trustees, under the terms of Exhibit B were not partners with the certificate holders. If, however, they were partners with certificate holders, what was their partnership fund? What were they partners in? In only *two things*: (a) The income and profits which would accrue to Hecht and Finn, as special partners (under Exhibit A) of Marcuse & Co., but only after such income and profits had been paid over by Marcuse & Co.; and (b) after dissolution, and all debts paid, the residue of the corpus which would be distributable to Hecht and Finn as special partners, *but only after* it had been paid over to Chicago Title and Trust Company.

The certificate holders had no interest, legal or equitable, in the assets or property of Marcuse & Co. (Ex. B, Sec. 6, Rec. 29.)

The money (and the only money) they were to receive was a share in the profits, or liquidated proceeds, receivable by Hecht and Finn, if (and only if) and after (and only after) such profits and proceeds had been *severed and segregated* from the property and custody of Mar-

cuse & Co. and paid over to Chicago Title & Trust Company. (Ex. B, Secs. 1, 2, 4, 6, Rec. 26, 27, 28, 29.)

When profits distributed by Marcuse & Co. reached the trust company, they were distributed by that company *not as profits but as a part of the trust fund*. (Ex. B, Secs. 1, 2, 4, 6.)

If, therefore, Exhibit B created a partnership between Hecht and Finn, and the certificate holders (which it did not), it was a subpartnership, and its members other than Hecht and Finn were not members of the firm of Marcuse & Co. or liable to its creditors, and Hecht and Finn were members of Marcuse & Co. not by reason of the Trust Agreement, but by reason of the Limited Partnership Agreement, to which none of these respondents were parties. Nothing in the law is better settled.

We quote leading text works on this principle:

Mechem's Elements of Partnership (2nd Ed. 1920), p. 52:

"One or more of the partners of a firm may agree with a third person to share with him the interest of such partner or partners in the firm. Such a relationship is frequently called a subpartnership, and the third person so associating with the partner is often called a subpartner. 'A subpartnership,' says Mr. Justice Lindley, 'is, as it were, a partnership within a partnership; it presupposes the existence of a partnership to which it is itself subordinate.' The term 'subpartnership,' however, is a misnomer. The subpartnership carries on no business; the subpartner has none of the authority of a partner; he does not thereby become a partner in the original firm, he is not liable as such to creditors of the original firm, and he has no right of accounting as a partner against the original firm, but only against such members of it as united with him to form the subpartnership."

Bates Law of Partnerships, Vol. 1, pp. 168, 169, 170:

"A partner has a right to contract with a stranger on his own account, whereby the latter shall participate in his share of the profits and bear part of his losses. This wheel within a wheel is called for convenience a subpartnership, and constitutes the parties to it partners, and the third person is called a subpartner.

But as between the original partners the subpartner is not a member of the firm, but is only a partner of the one with whom he contracted. The right of *delectus personarum* prevents any person being made a partner of others without their consent, and forcing upon the rest an associate whom they had not selected. * * *

Nor does the mere knowledge, recognition and approval of the other partners of the arrangement between one of their number and a subpartner constitute the latter a member of the firm. * * *

Nor is such subpartner liable as partner to creditors of the firm, for he does not participate in the profits as principal, and has no community in them or lien before division to compel an accounting and distribution, nor a control over the operations of the firm, but his claim is merely a demand against the partner with whom he contracted. The principles of *Cox v. Hickman*, etc., Secs. 19-23, are conclusive upon this."

Parsons on Partnership, p. 33:

"Subpartner is the name often given to one with whom a partner shares his profits by agreement. Since, however, such a person is neither in fact a partner nor is he held liable as a partner, the term subpartner is misleading and not to be commended."

Cyclopedia of Law and Procedure, Vol. 30, pp. 381, 382:

"When a partner contracts with a person outside the firm to share with such person the profits and losses of his own interest in the firm, their relationship is often described as that of subpartnership. This, however, does not seem to be an accurate or desirable term; for such joint owners are not engaged in carrying on a business in common with a view of profit. Their actual relations are

generally those of creditor and debtor. It follows from the doctrine already stated that a partnership cannot be created between persons without their voluntary assent that a subpartner is not a member of the firm. Even the knowledge of one partner that his copartner has agreed to share his share with an outsider and his assent to such arrangement, does not introduce such outsider into the firm. *The fact that a subpartner takes a portion of the firm's profits has never been held enough to render him liable for the firm's debts;* for he has no joint proprietorship with all the partners in the profits before division, he has no right to an account as a partner, and he has no lien on the partnership assets to secure his claim to a 'share of a share' of the profits. His claim is against the individual partner who has contracted with him. So his liability is limited to such individual, and to that individual's separate creditors; unless indeed he has held himself out as a member of the firm, and induced persons to give credit to the firm on the strength of such holding out. While a subpartner has no right to an account as a partner, he may be entitled to maintain an equity action against all the members of the firm, in order to have determined his share in the interest of the partner who contracted with him. But such an action does not operate to force plaintiff into the firm as a member thereof. On the other hand it subjects plaintiff to all the defenses, set-offs, and counterclaims available against the partner whose interest he seeks to share."

And in the same volume, at page 396, it is said that:

"One who is not in fact a member of a firm and who has not held himself out as a member does not become liable for the firm's debts, by reason of a contract which entitled him to divide with one of the partners the latter's share of the firm's profits."

American State Reports, Vol. 115, p. 400, 430, note:

"Status of subpartners with respect to the main partnership—

The fact that one is a subpartner—that is, a person who has an agreement with a member of a partnership to share with such member his proportion of the partnership—does not make him a member of the partnership.”

A long list of cases is cited in this note in support of this proposition, with no reference to any case dissenting therefrom.

Ruling Case Law, Vol. 20, 1073, 1074:

“A partner may make an agreement with a third person for a division of the profits coming to him from the partnership enterprise, and, if the character of the agreement is such as to disclose the essentials necessary to a partnership, a subpartnership is thereby formed between the partner and the third person; but such person does not become a member of the first partnership nor is he liable for its debts. How profits between two members of a subpartnership are to be divided is immaterial, and the mere fact that the one who is not a partner of the original partnership is to receive the entire profits of the business will not prevent the formation of a subpartnership. Whether the relationship between a partner and a stranger created by giving the latter a share of the profits is termed a subpartnership or not, the rule is well established that an agreement between a member of a partnership and a third person, *with the knowledge and assent* of the other partners, that the third person should share in a certain proportion, in the profits and losses of the contracting partner in the partnership business, does not make such third person a partner or liable for the partnership debts.”

The following cases are to the same effect:

Burnett v. Snyder, 76 N. Y. 344.

Burnett v. Snyder, 81 N. Y. 550; 37 Am. Rep. 527, 531.

Bybee v. Hawkett (C. C. A. 6), 12 Fed. 649.

Bank v. Morris, 43 Legal Intelligence (Pa.) 56.

Rockafellow v. Miller, 107 N. Y. 507.

O'Connor v. Sherley, 107 Ky. 70; 52 S. W. 1056.

Setzer v. Beale, 19 W. Va. 274, 287, 288.

Crehan v. Megargel (N. Y. App. Div.) 192 N. Y. S. 290, 299.

Meyer v. Krohn, 114 Ill. 574, 581.

The fact that Marcuse and Morris, general partners, in writing, on Exhibit B, consented to this trust arrangement in its application to the firm of Marcuse & Co. in nowise changes this legal situation. The same fact was present in the following cases, in which the arrangement was held to be a subpartnership:

Burnett v. Snyder, 81 N. Y. 550, 553, 554.

Rockafellow v. Miller et al., 107 N. Y. 507, 510.

See, also, the textbooks:

Bates, *Law of Partnership*, p. 169.

Cyc. of Law and Procedure, Vol. 30, p. 382.

Ruling Case Law, Vol. 20, p. 1074.

The fact that the partnership was created by Exhibit A, and the trust by Exhibit B, at substantially the same time, and that the purpose of Hecht and Finn in executing Exhibit B was to raise money to put into the capital of Marcuse & Co. as special partners, does not in any way change this legal situation. That element of fact was present in the following cases, in which there was held to be a subpartnership:

Burnett v. Snyder, 76 N. Y. 344, 348, 349.

Burnett v. Snyder, 81 N. Y. 440, 553.

O'Connor v. Sherley, 52 S. W. (Ky) 1056.

If, therefore, we should concede (which we do not) (1) that Exhibit B created a *partnership* between Hecht and Finn, and the other certificate holders, and (2) that Hecht and Finn were *general and unlimited partners*

of Marcuse & Co.; yet, on the plain and undisputed principle of law here set forth, the certificate holders would be "*subpartners*" among themselves, and not *partners* of Marcuse & Co., and not liable for the debts of that firm.

C.

THE TWO STUDEBAKERS WERE NOT EVEN
CERTIFICATE HOLDERS UNDER EXHIBIT B,
AND CANNOT BE HELD LIABLE AS PARTNERS
ON ~~IN~~ ANY THEORY.

Prior to April 2, 1917 (in March), Marcuse had a talk with Clement Studebaker, Jr., in Boston (Rec., 443, 502), about a firm he (Marcuse) was then endeavoring to organize. Petitioners' (Brief, pp. 86, 87), to sustain their contention that the Studebakers should be held liable as partners of Marcuse & Co., refer to this conversation and also to another conversation had between Marcuse and Scott Brown. The conversation with Clement Studebaker, Jr., was, of course, prior to the April 2, 1917, arrangement and could have no reference to the arrangement finally worked out and evidenced by the documents signed on June 30, 1917. The quoted statement (Petitioner's brief, p. 33) as to what Mr. Brown said to Marcuse with reference to Hecht was made with direct reference to the position which Hecht was to occupy under the Trust Agreement. Neither conversation has the slightest tendency to sustain petitioners' contention, but both are in absolute harmony and perfectly consistent with Exhibits A and B, the documents finally executed. For a detailed analysis of the testimony and the record with reference to the Studebakers and with reference to the conversations just referred to, see the appendix to this brief, page xcii.

The evidence establishes beyond the realm of dispute the following facts:

(a) Neither Marcuse, nor anyone for him, had a word of communication with George M. Studebaker about the organization of Marcuse & Co. (Rec., 445.) And there is absolutely no evidence that Clement Studebaker, Jr., had any authority to speak for George.

(b) Scott Brown had no communication of any kind with George M. Studebaker relative to the matter until after Hoffman had signed the limited partnership document in Foreman's office on April 2, 1917, and then he only reported to him what had been done. (Rec., 534, 535.)

(c) The only talk that Marcus had with Clement Studebaker, Jr., with reference to his proposed firm was had sometime prior to April 2, 1917, and this is also true of his talk with Scott Brown in which Brown spoke of making \$50,000 available for that purpose, and both of these talks, of course, related to what Marcuse was then endeavoring to work out and which resulted in the signing of the limited partnership documents in Foreman's office on April 2, 1917, by the terms of which Hoffman was to contribute \$50,000 to the capital of that firm. (Rec., 229.)

(d) This proposed partnership was subsequently abandoned and the limited partnership document signed on that date never took effect.

(e) The record does not contain the slightest indication that Marcuse or Morris, or anyone on their behalf, or anyone else, ever had a word of communication with either George M. Studebaker or Clement Studebaker, Jr., from that time on until after the firm of Marcuse & Co. composed of Marcuse, Morris, Hecht and Finn had been organized, the trust agreement, Exhibit

B, had been executed and Studebaker Bros. Trust had purchased a \$50,000 certificate.

The two Studebakers are interested in Studebaker Bros. Trust, likewise Scott Brown. (Rec., 576.) The written instrument creating Studebaker Bros. Trust is in evidence. (Rec., 576.) If, therefore, George M. Studebaker and Clement Studebaker, Jr., became members of the firm of Marcuse & Co. it is because, *and only because*, Studebaker Bros. Trust through Hoffman acquired and became the owner of a \$50,000 certificate under the Hecht-Finn Trust created by Exhibit B. Neither George M. Studebaker nor Clement Studebaker, Jr., ever directly or indirectly invested a dollar in Marcuse & Co., nor did they ever directly or indirectly receive a dollar in the way of profits *as profits or otherwise* from that firm.

In order to establish any connection between George M. Studebaker and Clement Studebaker, Jr., and the profits or dividends of Marcuse & Co. this road must be traveled: Upon a declaration of dividends by Marcuse & Co., the amounts due to Hecht and Finn under Exhibit A were paid to Chicago Title & Trust Company according to the terms of Exhibit B, and thus ceased to be dividends or profits and became a part of the trust fund to be distributed by Chicago Title & Trust Company to the certificate holders under Exhibit B, whereupon Chicago Title & Trust Company in the distribution of this trust fund paid to Studebaker Bros. Trust its proportionate share of the distribution made on the certificate which that trust held, and the amount so paid thus became a part of the trust fund provided for under the Studebaker Bros. Trust agreement, and, in due course, as distributions were made out of the Studebaker Bros. Trust fund George M. Studebaker and Clement Studebaker, Jr., as beneficiaries under the Studebaker Bros.

Trust agreement received their proportionate share of such distributions.

Neither of the Studebakers ever purchased or owned a trust certificate under Exhibit B. Studebaker Bros. Trust is a fund. The LEGAL TITLE to that fund was and is in Chicago Title & Trust Company, and in no one else. (Hecht Ex. 1, Sec. 11, Rec., 589.)

The Studebakers are not the sole beneficiaries under this trust. (Rec., 594, 576, 585, 586, 587.) The instrument plainly contemplates other beneficiaries. The written directions are not in evidence and, therefore, it does not appear definitely who certain of the other beneficiaries are, or whether they are two or ten in number. In any event the two Studebakers as individuals had no title to the "fund."

Hoffman in delivering the check for \$50,000 in payment for a trust certificate was acting as the representative of Studebaker Bros. Trust. (Rec., 642.)

It does not appear that either of the Studebakers ever heard of the purchase by Studebaker Bros. Trust of a trust certificate, until after such purchase was made.

We feel that plain speaking on behalf of George M. Studebaker and Clement Studebaker, Jr., will be satisfied with nothing less than for us to say that the contention that these two men were partners in the firm of Marcuse & Co. and liable as such for the debts and obligations of that firm is nothing less than absurd.

Petitioners suggest (Brief, p. 90) that Studebaker Bros. Trust was joint venture, which they say was nothing but a partnership, and they cite two Illinois cases which we here very briefly analyze to show they are not in point.

Morse v. Richmond, 97 Ill. 303.

In that case several parties purchased real estate. Each contributed to the fund. The property was to be improved and sold. For convenience title was placed in one of them as trustee and the trust instrument gave him the power to manage, improve, sell, etc. It provided that the proceeds or profits should be divided according to their respective shares. As money was needed from time to time for expenses each party to the transaction put up his share. They were joint owners in the business, and held to be a partnership.

People v. Brander, 244 Ill. 26.

In this case an indictment against Brander charged him as agent and clerk of "American Express Company, an association," with embezzlement, larceny and the sale of stolen property. The court held that the indictment was bad. In the course of the opinion the court said that a private joint stock company is a partnership and nothing more. The court treated the American Express Company as an ordinary private joint stock company and apparently assumed that the powers and authority of the stockholders under the articles of association were such as to create a partnership.

THE QUESTION OF CIRCUMVENTION.

Petitioners contend that the arrangements evidenced by Exhibits A and B were designed and intended by the parties only to circumvent the rules of the New York Stock Exchange; that in fact all of the parties intended that the status to be occupied by them with reference to each other and to Marcuse & Co. should be the same status they would have occupied if the documents left in escrow with Colonel Foreman had become effective, and they argue that the trial court so held and upon sufficient evidence; that this is a controverted question of

fact settled by the trial court against respondents and not one for consideration in this court. A consideration of the record will show the court that petitioners' contention is wholly without merit.

After the first limited partnership agreement had been executed on April 2, 1917, and nine duplicate originals thereof left in escrow with Colonel Foreman as heretofore pointed out, Marcuse went to New York to make arrangements to permit the proposed firm to transact business on the New York Stock Exchange, etc. (Rec., 454, 498.)

He testified in effect that he there ascertained that the partnership, as contemplated by this document signed on April 2, 1917, would not be permitted on the New York Stock Exchange. (Rec., 498, 499.) Following his return to Chicago, he received the telegram from the secretary of that exchange, which counsel for the petitioning and intervening creditors introduced in evidence as Petitioners' Exhibit 15, and which we here reproduce. (Rec., 262.) This telegram reads:

"The committee on commissions probably would not object to a firm having two special partners if they were not engaged in any other business and were otherwise passed upon favorably by said committee."

Probably the word "commissions" was intended to be "admissions."

Two things are clearly indicated by this telegram:

(a) So far as the New York Stock Exchange was concerned, not more than two special partners were permissible.

(b) The special partners must not be engaged in any other business.

But,

(a) The firm of Marcuse & Co., as contemplated by the documents signed on April 2, 1917, was to have six special partners:

(b) Four of the six were actively engaged in other businesses. (Rec., 330, 331.)

Marcuse clearly recognized that the plan for the firm as provided for in the documents signed on April 2, 1917, could not be carried out. He so indicated to his lawyer, Mr. Sidney Stein, attorney for himself and Morris through all of these negotiations and transactions, (Rec., 499), and everybody else concerned were promptly notified to that effect.

Marcuse testified on cross-examination that as a result of his trip to New York he knew when he came back that the contemplated partnership, evidenced by the documents which had been left in the possession of Colonel Foreman, could not go into effect and *that that plan would have to be abandoned*. He testified specifically, directly and unequivocally that he so told Vette, Zuncker, Regensteiner, Hoffman, Scott Brown, Hecht and Finn. (Rec., 498, 499.)

It appears from the evidence without the possibility of dispute or doubt that:

(a) Marcuse and his lawyer, Stein (attorney for Marcuse and Morris) fully understood that the plan as contemplated by the documents signed in Colonel Foreman's office *had to be abandoned*, and the reasons for it; (Rec., 498, 499.)

(b) Marcuse so notified Hecht, Finn, Vette, Zuncker, Hoffman, Scott Brown and Regensteiner; (Rec., 498, 499.)

(c) Stein so notified Colonel Buckingham, (Rec., 551, 552, 575), the partner of Hoffman, and counsel for Scott Brown, Studebaker Bros. Trust and the two Studebakers. Scott Brown also told Buckingham after he had gotten the information from Marcuse. Stein likewise notified Colonel Foreman, (Rec., 547, 549), who was the attorney for Vette and Zuncker, and Foreman, in turn, so notified Zuncker, (Rec., 547), who was the one with whom he dealt chiefly in connection with both Vette and Zuncker in these transactions. (Rec., 547, 619.)

(d) Stein also notified his friend and client, Finn, and Finn testified that he thereafter assumed that that contemplated firm was abandoned. (Rec., 325, 326.)

(e) Zuncker testified that he knew that deal was off, (Rec., 392), and that the original arrangement was "cancelled altogether." (Rec., 379.)

(f) Regensteiner knew it. (Rec., 498, 428?)

(g) Hoffman knew it. (Rec., 499.)

(h) Scott Brown knew it. (Rec., 499, 552.)

(i) Hecht, who was too ill to come into court when this matter was on hearing, and who has since died, knew it, for such is the positive and uncontradicted testimony of Marcuse. (Rec., 499.)

If further notice to Colonel Buckingham was necessary he had it when Marcuse and Stein subsequently came into his office to persuade him, if they could, to have his clients come into a new arrangement which Marcuse and his attorney, Stein, were then desirous of working out, (Rec., 552), and Hoffman had it for he was present at that conference. (Rec., 553, 552, 637.)

Colonel Foreman, with whom the documents signed April 2, 1917, were left in escrow, went into the service sometime in May, 1917, and was not active in his office after that (although in and out occasionally before leaving Chicago) until he returned from the war (Rec., 547, 548), and, for that reason, his partner, Robertson, looked after the interests of Vette and Zuncker. (Rec., 548, 621.) Although the documents signed in Colonel Foreman's office on April 2, 1917, were abandoned, these documents and the escrow letters rested in Foreman's vault until in the early part of July, 1917, when they were formally canceled by the destruction of the signatures thereto by Sidney Stein and Robertson. (Rec., 619, 620, 634, 635.)

Marcuse testified that he knew the circumstances under which the signatures were partially torn off, although he did not know who tore them off. (Rec., 455.)

Petitioner seeks to make a point (Brief, p. 41) of the fact that the signatures to the documents were not destroyed until in July. (Rec., 620.) This is of no consequence. That the contemplated firm had been abandoned is beyond dispute.

After the receipt of the telegram of May 8, 1917, Marcuse and Stein endeavored to organize another partnership which would meet the requirements of the New York Stock Exchange. (Rec., 552, 553, 637.)

After they were advised that the arrangement of April 2, 1917, would have to be abandoned the attitude of the persons named as special partners in that document (other than Hecht and Finn) and of their counsel underwent a change and Buckingham, who had been away when the original arrangement was made and who had had no part in it but learned of it only after the execution of the documents in Colonel Foreman's office, was opposed to that arrangement and when Marcuse and Stein interviewed him later in their effort to organize a new firm with only two limited partners he stated to them that neither Hoffman nor any one representing his clients would become a partner, general or special, in any firm. (Rec., 553, 621, 637.) Zuncker when approached by Marcuse with reference to the new firm told Marcuse that he would have nothing to do with it (Rec., 393), and, as pointed out, Zuncker also spoke for Vette. (Rec., 547, 619.) Marcuse testified that he worked out a plan on his way back from New York (Rec., 500), but if he did it was not the plan finally consummated for he testified that the idea of a trust agreement did not come from his mind. (Rec., 500.) Early in May, 1917, Stein advised Buckingham that the original partnership arrangement had "fallen down" (Rec., 552, 553, 599), and it was on June 5, 1917, nearly a month after the receipt of the telegram in question when Marcuse and Stein met

Buckingham, Brown and Hoffman at Buckingham's office (Rec., 552, 553, 637) and endeavored to persuade Buckingham to have his clients become limited partners in the proposed new firm which Marcuse and Stein were then endeavoring to organize.

Buckingham's refusal; his insistence that no client of his would become a partner, general or limited, in that firm; that if any money was invested by any client of his it would be by Studebaker Bros Trust; the pains that were taken in the preparation of Exhibit B, etc., have been pointed out in another part of this brief (pp. 5, 6) and will not be repeated here. Hecht and Finn were persuaded to become limited partners by Marcuse, Stein and Mayer. (Rec., 267, 328, 331, 465.) These respondents had nothing to do with it. Exhibit B as finally executed was the product of the minds of Buckingham, Hoffman and Robertson and they were the ones who inserted Section 6 therein. (See this brief, pp. 6, 7.) Every effort was made which could be made by careful lawyers who were determined that their clients should not assume a partnership relation with Marcuse & Co. but should be wholly removed therefrom to accomplish that result and no one can read Exhibit B and draw any other conclusion. The unsuccessful efforts which Marcuse and Stein made to induce Buckingham to have his clients become limited partners and to induce Zuncker, and, through him, Vette to become limited partners, before Marcuse, Stein and Mayer succeeded in persuading Hecht and Finn to become limited partners in their proposed new firm, led to conversations and conferences between various parties all taking place prior to June 30, 1917, upon which date Exhibits A and B, which evidenced the arrangement as finally consummated, were executed, and it is with this in mind that we urged in the trial court

and have heretofore pointed out and now again urge, that evidence as to these matters antedating the execution of Exhibits A and B was immaterial.

The arrangement as finally made was not what Marcuse and Stein would have had it, but so far as these respondents were concerned, Marcuse and Stein yielded to the only arrangement which Vette, Zuncker and Regensteiner, through their counsel, and which Buckingham, representing the Studebaker Bros. Trust, would have anything to do with.

As so well expressed by the Supreme Court of Pennsylvania in, *In Re Haines & Co's. Estate*, 176 Pa. 354; 35 Atl. 237, p. 239:

"What then do we have? A proposition made and objected to; an informal discussion prolonged for a month or more; then a yielding of objections and a consent; but what was to be done 'not exactly or succinctly stated'; and finally the parties, with the aid of counsel, putting their agreement formally into writing. It would be difficult to imagine a case calling more strictly for the enforcement of the rule that all prior negotiations are merged in the writing which is to be the sole evidence of the intentions of the parties."

It is into the field which lies beyond the execution of Exhibits A and B that petitioners go for their excerpts from the record which they rely upon to justify their contention that Exhibits A and B do not represent the real intention of the parties and we now desire to show the court how unfairly they have used the record and that the evidence in this record when fairly read does not bear out or justify their contention.

We have already made the point, and cited authorities which abundantly support it (see this brief, pp. 76, 78), that all of the conversations and negotiations which antedated the execution of Exhibits A and B (June 30, 1917)

were merged in these written instruments and inadmissible. The legal effect of these documents is not changed by anything which may have taken place in the negotiations antedating their execution during which time the plan finally evidenced by Exhibits A and B was in the making, nor by any expression from any witness as to what may have been his understanding as to the legal status of the parties. We feel, therefore, that the excerpts from the record which petitioners have used on pages 32 to 38 inclusive of their brief should and will receive but little attention from this court because they fall under the condemnation of the rule to which we have adverted and we do not feel justified in lengthening this brief, already too long, by a detailed analysis of the evidence from which petitioners have lifted the excerpts, which they have quoted without regard to their context.

The excerpts to which we refer, however, have been most unfairly used. Disregarding context they have been put together in a manner to convey an entirely erroneous impression. Petitioners thereby have sought to justify their contention that Exhibits A and B were not intended by the parties to mean what they say, but that despite these exhibits the parties intended that all of them except Marcuse and Morris should be limited partners.

An analysis of the testimony in connection with these various excerpts proves to a demonstration that there is no justification in the record for petitioners' contention in this regard and, therefore, anticipating the possibility that the court may desire to make such an examination, we have made such an analysis to show what it was the witnesses were really saying and what they meant to say by the statements contained in these excerpts and this analysis with comments in connection therewith the court will find in our appendix.

As to the first excerpt (Brief, p. 32; Rec., 457) see appendix, page lviii.

As to the second excerpt (Brief, p. 32; Rec., 458) see appendix, page lx.

As to the third excerpt (Brief, p. 32; Rec., 460) see appendix, page lxii.

As to the first excerpt on page 33 of their brief (Rec., 462), see appendix, page lxvii.

As to the excerpt at the bottom of their brief, p. 33 (Rec., 470, 471) see appendix, page lxx.

As to the reference to Scott Brown at the bottom of petitioners' brief, page 33 (Rec., 467), see appendix, page xcii.

As to the excerpt from the trial court's comments (Brief, p. 34; Rec., 471), see appendix page lxii.

As to the excerpt from the testimony in petitioners' brief, p. 34 (Rec., 471), see appendix, page lxxiv.

As to the excerpt from the testimony of Finn in petitioners' brief, p. 35 (Rec., 257), see appendix, page lxxvi.

Here is a typical instance of the unfairness to which we refer. Finn was testifying to a conversation with Stein, Mayer and Marcuse. He testified that none of the other parties were present. The trial court expressly held that this testimony of Finn was not evidence as against any of these respondents (Rec., 257), but petitioners do not point that fact out in their brief, but use this statement by Finn against all respondents.

As to the excerpts at the bottom of page 35 and the top of page 36 of petitioners' brief (Rec., 688), see appendix, page lxxvii.

As to the excerpt from the testimony of Regensteiner (Brief, p. 36; Rec., 428, 429), see appendix, page lxxviii.

As to the excerpts from the testimony of Hoffman (Brief, p. 37; Rec., 674, 675, 683, 687), see appendix, page lxxxii.

When these excerpts from the record are read in connection with their context so that what the witnesses really testified to is understood, they utterly fail to sustain petitioners' contention. Written documents so carefully prepared and solemnly entered into as Exhibits A and B cannot thus be cast aside. Every important transaction involves preceding negotiations. Every change of plan involves discussions between the parties. With the passing of time the recollections and understandings of men may vary and people reduce their agreements to writing and thus put them in the form of written contracts to set at rest the things they finally agree upon and these solemn agreements cannot be cast aside in the manner in which petitioners seek to cast them aside.

THE TRIAL COURT'S FINDINGS.

Petitioners state (Brief, p. 12) that after the parties learned of the position taken by the New York Stock Exchange there was no thought of abandoning the proposed limited partnership as evidenced by the documents left in escrow with Colonel Foreman, but that they determined to "circumvent or evade" the rules of that stock exchange and that it was determined that the partnership should proceed just as originally planned with Hecht and Finn appearing as special partners and representing all of the respondents.

In other words, this is but a reiteration of petitioners' argument that Exhibits A and B did not indicate the real agreement between the parties but that this plan was designed only to circumvent or evade the rules of

the New York Stock Exchange and the parties intended that all of them except Marcuse and Morris should be in fact limited partners.

And, they argue further that the trial court so held (Brief, pp. 44, 45) and that this holding involved a controverted question of fact which cannot be considered by this court.

As to the question of circumventing or evading the rules of the New York Stock Exchange we have simply this to say: Marcuse & Co. as originally contemplated would have had more than two limited partners, some of whom would have been engaged in other lines of business. This the New York Stock Exchange would not permit. If Marcuse organized a limited partnership and succeeded in having that partnership admitted to the New York Stock Exchange it must be a partnership with not to exceed two limited partners neither of whom were engaged in other lines of business. Marcuse thereupon undertook to organize such a firm so that his firm, when organized, might be admitted to membership in the New York Stock Exchange, and to that extent and that extent only may it be said that he designed and intended to "circumvent or evade" the so-called rules of the stock exchange. *As a matter of fact it was neither circumvention or evasion, but compliance.*

The New York Stock Exchange was concerned with two things,

(a) That the limited partnership should have not to exceed two limited partners, and

(b) That neither of these partners should be engaged in any other business.

The stock exchange was not concerned with the manner in which the limited partners procured the funds

which they contributed to the capital of the firm and it is not complaining and has never complained.

What did the trial court find and what is the character of the finding?

The announcement of the court's conclusion is in the record. (Rec., 689.) The court said:

"The conclusion is that the so-called 'special partners' are all general partners; that these so-called 'special partners,' selected,—all of them selected Hecht and Finn as the agents for the operation of the special partnership, by and through Hecht and Finn; that Hecht and Finn, in fact were Hecht and Finn, Vette,—what is that other name,—Siedenstricker?

Mr. Gesas: Regensteiner.

The Court (continuing): Regensteiner, the Hecht-Finn Trust, the Studebaker Trust, as Clement and George Studebaker; that that is what Hecht-Finn were. They were all of these people; and that under the laws of the State of Illinois that thing was not a special partnership, but it was, by the law of the State of Illinois, a general,—member of a general partnership, by reason of the failure to comply with the Illinois statute specifying the steps, and prescribing the route to be taken to constitute a limited partnership, which, as I have announced before, it was my view, had to be obeyed to accomplish that end, but which in this case was not done in any essential particular. Now, that is my conclusion."

If the trial court meant by the statement that all of the parties selected Hecht and Finn as the agents for the operation of the special partnership, that these respondents or any of them had anything to do with inducing or persuading either Hecht or Finn to become a limited partner in this firm there is not a scintilla of evidence in the record to sustain such a statement. None of these respondents had anything to do with the selection of Hecht and Finn as the two limited partners.

This is established by the uncontradicted evidence in the record. (Rec., 267, 268, 327, 328, 331, 465, 500.)

Of course, certificate holders who agreed to acquire certificates under Exhibit B and who did acquire them acquiesced in the selection of Hecht and Finn as the two limited partners and consented to their acting in that capacity and as trustees under Exhibit B, and manifestly it was in that sense that the trial court was speaking when he spoke of Hecht and Finn having been selected.

Not a word about circumvention or evasion will be found in the trial court's remarks and not a suggestion that Exhibits A and B did not express the real agreement of the parties.

Suppose no evidence had been introduced as to anything (conversations, conferences, documents, etc.) occurring or having taken place prior to the execution of Exhibits A and B on June 30, 1917, but the evidence began, as we insist it should have begun, with the execution of Exhibits A and B.

Suppose it was contended as it was, that, by reason of Exhibit B, all of the certificate holders occupied the same relationship to the firm, as did Hecht and Finn, and that because the limited partnership certificate was not filed until July 2nd, their relationship was that of general partners. Suppose the trial court had reached the conclusion that this contention was sound and should be sustained. That conclusion could have been announced in precisely the language which the trial court did use.

Petitioners' contention that there was finally any other agreement or understanding than that evidenced by Exhibits A and B, *is utterly without support in this record*. With all the evidence considered there is no evidence which even tends to establish such a contention.

It falls for want of foundation to support it. If these respondents are liable as members of the firm of Marcuse & Co. it is because these written documents, together with the Studebaker Bros. Trust agreement, make them liable. Whether they do or not is a question of construction, hence, one of law.

If the trial court considered anything other than these instruments in reaching his conclusion he had no right to do so, nor did the Court of Appeals.

Let parties speculate as they will as to what the trial court *must have found* in order to reach the conclusion he announced. This court will lay out of consideration all of the evidence which is immaterial and, reducing this case to its ultimates, will find that the material facts are established without contradiction and that the documents upon which the order of the trial court must stand or fall, present, not questions of fact, but questions of law.

THE QUESTIONS INVOLVED ARE QUESTIONS OF LAW.

Where the essential facts are not disputed and the contract is in writing the question of partnership is one of law.

Mackie-Clemens Fuel Co. v. Brady (1919), 208 S. W. 151, 152.

Ruling Case Law, Vol. 20, p. 849.

On a petition to review and revise the court may determine whether evidence was improperly admitted or excluded by the trial court. That is a "question of law" properly reviewable here.

In re Cole (C. C. A. 1st Cir.), 163 Fed. 180.

Goe v. Kane (C. C. A. 8th Cir.), 211 Fed. 956.

W. v. Taliaferro (C. C. A. 4th Cir.), 202 Fed. 51.

On a petition to review and revise, the court may review the evidence for the purpose of determining whether there was any substantial evidence to support the finding and action of the trial court. Such a question is purely a question of law.

In re Kuhn Bros. (C. C. A. 7th Cir. 1916), 234 Fed. 277, 279, 280.

Freed v. Central Trust Company of Illinois (C. C. A. 7th Cir. 1914), 215 Fed. 873, 876.

Good v. Kane (C. C. A. 8th Cir.), 211 Fed. 956, 958.

Shea v. Lewis (C. C. A. 8th Cir.), 206 Fed. 877, 884.

In re Charles Knosher & Co. (C. C. A. 9th Cir.), 197 Fed. 136, 140.

In re Cole (C. C. A. 1st Cir.), 163 Fed. 180, 188.

In re Cole (C. C. A. 1st Cir.), 144 Fed. 392, 393.

Wilson v. Continental Building & Loan Ass'n. (C. C. A. 9th Cir.), 232 Fed. 824, 827.

In the case of *In re Kuhn Bros.*, *supra* (234 Fed. 277, C. C. A. 7), the court, in a proceeding to review and revise, used the following language (pp. 279, 280):

"In the consideration of this petition, we have assumed all controverted facts as determined in favor of the respondent. That a review thereof and of the uncontroverted facts to determine whether there is any substantial evidence to sustain the order, is a review as to a matter of law within the provisions of Sec. 24b of the Bankruptcy Act is well settled. *Good v. Kane*, 211 Fed. 956, 128 C. C. A. 454."

In the instant case there is no conflict of evidence as to any material fact. A question arises solely as to the legal effect of the relevant facts in evidence. Such a question is purely one of law.

In the case of *In re Charles Knosher & Co.* (C. C. A.

3rd Cir. 1912), 197 Fed. 136, the court said in its opinion (page 140):

"The facts recited in these proceedings and material to the question at issue do not appear to be in doubt, or, at most, they are not a subject of controversy upon this petition for review. The only controversy is as to their legal import in the bankruptcy proceedings. Such questions may be reviewed upon a petition for revision."

Evidence may be reviewed on a petition to review and revise for any reason, for which evidence may be reviewed on a writ of error.

Shea v. Lewis (C. C. A. 8th Cir.), 206 Fed. 877, 884.

In re Cole (C. C. A. 1st Cir.), 144 Fed. 392, 393.

In so far as the Court of Appeals indicated, if it did intend to so indicate, that there was evidence in the record upon which the trial court might have found that Exhibits A and B did not represent the final agreement between the parties, but that the real intention of the parties was that the status or relationship of the parties to each other under the agreement as finally executed, that court was in error and such a statement, we submit, could only have been the result of a misapprehension of the full scope and effect of the testimony of the witnesses. We assert with all the confidence that can come from a painstaking consideration of the whole record that there is no evidence in this record from which any such conclusion can be fairly deduced.

The trial court made no formal findings of fact and entered an order simply holding that all respondents were partners of Marcuse & Co. The Circuit Court of Appeals reversed the trial court and held that none of respondents were partners. We contend with

the greatest confidence that the decision of the Circuit Court of Appeals was correct as to all respondents both as to the result and as to the grounds relied on. However, there were additional grounds upon which the Circuit Court of Appeals was bound to have reversed the trial court in holding that these respondents were partners, even though Hecht and Finn had been held liable. It seems hardly necessary to point out to this court that the rule announced in *McClurg v. Silliman*, 6 Wheaton, 598, 603, 5 L. Ed. 340, to the effect that the question on review is whether the judgment complained of is correct, not as to the ground announced by the court below, has never been changed in this court, but has been followed by this and other courts of last resort in literally hundreds of cases. (See very numerous cases cited in Vol. 4 Corpus Juris, 662-665.) The decision of the court was right, as also were the reasons which it gave for that decision. Even if those reasons were insufficient and Hecht and Finn were held liable, yet for other reasons pointed out in this brief, these respondents would not have been and could not be held, liable as partners of Marcuse & Co.

Petitioners ask that written documents formally executed be disregarded. They seek to enforce against Hecht and Finn, and through Hecht and Finn these respondents, the most harsh doctrine known to law. They would fasten upon them a partnership liability which they never intended to assume, and upon which no creditor ever relied. To serve their purpose they ignore entirely (as they must) the letter and spirit of the Uniform Partnership Acts and urge this court to read into the Uniform Partnership Act limitations and exceptions which would deprive parties of protection to which they

are otherwise clearly entitled. Petitioners are requesting the court to do an unconscionable thing and one that is at variance with principles of equity and justice.

CONCLUSION.

In conclusion we respectfully submit:

(1) By reason of the renunciation, etc., under Section 11 of the Limited Partnership Act none of these respondents can be held liable as general partners.

(2) None of the respondents intended to be general partners with Marcuse and Morris and under the final arrangement none of these respondents intended to be partners either general or limited with anyone, and, therefore, none of the parties except Marcuse and Morris were general partners as to each other, hence, under Section 7 (1) of the Uniform (general) Partnership Act not partners as to third parties.

Because of the foregoing, none of the respondents are liable to the creditors of Marcuse & Co.

(3) But, even if it should be held that Hecht and Finn are liable to such creditors none of these respondents are so liable because,

(a) Vette, Zuncker and Regensteiner assumed the relationship of *cestuis que trust* as certificate holders under Exhibit B only and not that of partners, general or limited, and the Studebakers are not even certificate holders and,

(b) If Exhibit B should be held to create a partnership between the certificate holders it could only be a subpartnership and as members of such subpartnership none of the certificate holders, other than Hecht and

Finn, were partners, general or limited, in the firm of Marcuse & Co. and Hecht and Finn as limited partners were such not because they were certificate holders or because of the provisions of Exhibit B, but because they were parties to Exhibit A.

We respectfully submit that the writ of certiorari should be dismissed for reasons pointed out at the beginning of this brief and if this be not done that the judgment of the Circuit Court of Appeals should be affirmed.

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Studebaker, Jr., and George M.
Studebaker.*



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1921.

Office Supreme Court, U. S.

FILED

SEP 28 1922

WM. H. STANSBURY

CLERK

No. **59**

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, JOHN JANCA, I. FIEGEL, FRED MAYER,
E. H. ALLEN, GEORGE B. GIFFORD AND HAROLD
LACHMAN,

Petitioners,

vs.

HENRY VETTE, PETER M. ZUNCKER, THEODORE
REGENSTEINER, CLEMENT STUDEBAKER, JR.,
GEORGE M. STUDEBAKER, FRANK A. HECHT AND
CLARA K. HECHT, EXECUTORS OF THE WILL OF FRANK
A. HECHT, AND JOSEPH M. FINN,

Respondents.

APPENDICES TO BRIEF OF RESPONDENTS VETTE, ZUNCKER,
REGENSTEINER, CLEMENT STUDEBAKER, JR., AND GEORGE M.
STUDEBAKER, IN OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

HARRY P. WEBER,
GEORGE W. MILLER,

*Attorneys for Respondents, Henry
Vette, Peter M. Zuncker and Theo-
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INDEX TO APPENDICES.

	PAGES
Appendix A—	
Explanatory note as to the Uniform Limited Partnership Act	1-5
Appendix B—	
Article on the Uniform Limited Partnership Act by William Draper Lewis, 65 U. of Pa. Law Rev. 715	6-25
Appendix C—	
Opinion in Crehan v. Megargel, 234 N. Y. 67...	26-41



APPENDICES.

APPENDIX A TO BRIEF OF RESPONDENTS VETTE, ZUNCKER, REGENSTEINER, CLEMENT STUDEBAKER, JR., AND GEORGE M. STUDEBAKER IN OPPOSITION TO PETITION FOR CERTIORARI.

(Italics ours.)

EXPLANATORY NOTE AS TO THE UNIFORM LIMITED PART- NERSHIP ACT.

“The business reason for the adoption of acts making provisions for limited or special partners, is that men in business often desire to secure capital from others. There are at least three classes of contracts which can be made with those from whom the capital is secured: One, the ordinary loan on interest; another, the loan where the lender, in lieu of interest, takes a share in the profits of the business; third, those cases in which the person advancing the capital secures, besides a share in the profits, some measure of control over the business.

At first, in the absence of statutes the courts, both in this country and in England, assumed that one who is interested in a business is bound by its obligations, carrying the application of this principle so far, that a contract where the only evidence of interest was a share in the profits made one who supposed himself a lender, and who was probably unknown to the creditors at the times they extended their credits, unlimitedly liable as a partner for the obligations of those actually conducting the business.

Later decisions have much modified the earlier cases. The lender who takes a share in the profits, except possibly in one or two of our jurisdictions, does not by reason of that fact, run a risk of being held as a partner. If, however, his contract falls within the third class mentioned, and he has any measure

of control over the business, he at once runs serious risk of being held liable for the debts of the business as a partner; the risk increasing as he increases the amount of his control.

The first Limited Partnership Act was adopted by New York in 1822; the other commercial states, during the ensuing thirty years, following her example. Most of the statutes follow the language of the New York statute with little material alteration. These statutes were adopted, and to a considerable degree interpreted by the courts, during that period when it was generally held that any interest in a business should make the person holding the interest liable for its obligations. As a result the courts usually assume in the interpretation of these statutes two principles as fundamental.

First. That a limited (or as he is also called, a special) partner is a partner in all respects like any other partner, except that to obtain the privilege of a limitation on his liability, he has conformed to the statutory requirements in respect to filing a certificate and refraining from participation in the conduct of the business.

Second. The limited partner, on any failure to follow the requirements in regard to the certificate or any participation in the conduct of his business, loses his privilege of limited liability and becomes, as far as those dealing with the business are concerned, in all respects a partner.

The courts in thus interpreting the statutes, although they made an American partnership with limited members something very different from the French *Societe en Commandite* from which the idea of the original statutes was derived, unquestionably carried out the intent of those responsible for their adoption. This is shown by the very wording of the statutes themselves. For instance, all the statutes require that all partners, limited and general, shall sign the certificate, and nearly all state that 'If any false statement be made in such certificate, all the persons interested in such partnership shall be lia-

ble for all the engagements thereof as general partners.'

The practical result of the spirit shown in the language and in the interpretation of existing statutes, coupled with the fact that a man may now lend money to a partnership and take a share of the profits in lieu of interest without running serious danger of becoming bound for partnership obligations, has, to a very great extent, deprived the existing statutory provisions for limited partners of any practical usefulness. Indeed, apparently their use is largely confined to associations in which those who conduct the business have not more than one limited partner.

One of the causes forcing business into the corporate form, in spite of the fact that the corporate form is ill suited to many business conditions, is the failure of the existing limited partnership acts to meet the desire of the owners of a business to secure necessary capital under the existing limited partnership form of business association.

The draft herewith submitted proceeds on the following assumptions:

First. No public policy requires a person who contributes to the capital of a business, acquires an interest in the profits and some degree of control over the conduct of the business, to become bound for the obligations of the business; provided creditors have no reason to believe at the times their credits were extended that such person was so bound.

Second. That persons in business should be able, while remaining themselves liable without limit for the obligations contracted in its conduct, to associate with themselves others who contribute to the capital and acquire rights of ownership, provided that such contributors do not compete with creditors for the assets of the partnership.

The attempt to carry out these ideas has led to the incorporation into the draft submitted of certain

features not found in, or differing from, existing limited partnership acts.

First. In the draft the person who contributes the capital, though in accordance with custom called a limited partner, is not in any sense a partner. He is, however, a member of the association. (See Sec. 1.)

Second. As limited partners are not partners securing limited liability by filing a certificate, the association is formed when substantial compliance, in good faith, is had with the requirements for a certificate. (See Sec. 2 (2).) This provision eliminates the difficulties which arise from the recognition of *de facto* associations, made necessary by the assumption that the association is not formed unless a strict compliance with the requirements of the act is had.

Third. *The limited partner, not being in any sense a principal in the business, failure to comply with the requirements of the act in respect to the certificate, while it may result in the nonformation of the association, does not make him a partner or liable as such. The exact nature of his liability in such cases is set forth in Section 11.*

Fourth. The limited partner, while not as such in any sense a partner, may become a partner as any person not a member of the association may become a partner; and, becoming a partner, may nevertheless retain his rights as limited partner; this last provision enabling the entire capital embraced in the business to be divided between the limited partners, all the general partners being also limited partners. (Sec. 12.)

Fifth. The limited partner is not debarred from loaning money or transacting other business with the partnership as any other nonmember; provided he does not, in respect to such transactions, accept from the partnership collateral security, or receive from any partner or the partnership any payment, conveyance, or release from liability, if at the time

the assets of the partnership are not sufficient to discharge its obligations to persons not general or limited partners. (Sec. 13.)

Sixth. The substitution of a person as limited partner in place of an existing limited partner, or the withdrawal of a limited partner, or the addition of new limited partners, does not necessarily dissolve the association (Secs. 8, 16 (2b)); no limited partner, however, can withdraw his contribution until all liabilities to creditors are paid. (Sec. 16 (1a).)

Seventh. As limited partners are not principals in transactions of the partnership, their liability, except for known false statements in the certificate (Sec. 7) is to the partnership, not to creditors of the partnership. (Sec. 17.) The general partners cannot, however, waive any liability of the limited partners to the prejudice of such creditors. (Sec. 17 (3).)

Respectfully submitted,

NEW YORK LEGISLATIVE DRAFTING
ASSOCIATION,

By WM. DRAPER LEWIS,
Draftsman."

**APPENDIX B TO BRIEF OF RESPONDENTS VETTE, ZUNCKER,
 REGENSTEINER, CLEMENT STUDEBAKER, JR., AND
 GEORGE M. STUDEBAKER IN OPPOSITION TO PETITION
 FOR CERTIORARI.**

THE UNIFORM LIMITED PARTNERSHIP ACT.

Vol. 65, Univ. of Pennsylvania Law Rev. 715.

On August 28th of last year the conference of Commissioners on Uniform State Laws, meeting in Chicago, adopted a limited partnership act and recommended it to the legislatures of the several states. The first state to adopt the act is Pennsylvania, the act becoming part of the law of the state on April 12th.

The committee of the conference charged with the duty of preparing the tentative drafts for submission to the conference, was the Committee on Commercial Law, the same committee which has been responsible for the acts on negotiable instruments, bills of lading, warehouse receipts, sales of goods and partnership. The writer, acting for the New York Drafting Association, served the Commercial Law Committee in the capacity of draftsman; that is, he was responsible for placing before the Committee the successive tentative drafts. But, as in the case of all other commercial acts recently issued by the Conference, the two successive drafts of this limited partnership act submitted to the Conference were the joint work of the Commercial Law Committee and the draftsman, every sentence being hammered out by round table discussions. The Conference, itself, composed as it is of lawyers appointed by the governors of the several states, devoted many hours of the 1915 and 1916 sessions to a full discussion of the general principles on which the act is based, and to the wording of each section.

The term "limited partnership" is sometimes employed to denote an association for carrying on business with a view to profit, in which, as in a corporation, the liability of all the members is limited to their contributions to the common fund, or to some multiple of such contributions, but in which the other legal incidents are not identical with those of an association organized under the general incorporation law of the state. These associations are not partnerships and are incorrectly designated as "limited partnerships." A true limited partnership is an association in which the liability of one or more, but not all of the members is limited to their contributions to the common fund; the liability of the other member or members for the debts of the association being unlimited. The members whose liability is limited are usually referred to as "limited" or "special partners," while those whose liability is unlimited are referred to as "general partners."

The first limited partnership act in the United States, was that adopted by the State of New York in 1822; the other commercial states during the ensuing thirty years followed her example, until to-day all the states, except New Mexico, have such an act. The various statutes follow the language of the New York statute with little material variation. The New York Act was modeled on the *Societe en Commandite* of the French Commercial Code. The Surrogate, Alexander W. Bradford, speaking in 1850, of the New York statute, in his opinion in *Ames v. Downing*,¹ gives an account of the origin of this French business association. He says:

"The system of limited partnerships, which was introduced by statute into this state, and subsequently, very generally adopted in many other states of the Union, was borrowed from the French Code.

¹ Bradf., p. 351 (N. Y. 1850).

3 Kent 36; Code de Commerce. It has existed in France from the time of the middle ages; mention being made of it in the most ancient commercial records and in the early mercantile regulations of Marseilles and Montpellier. In the vulgar latinity of the middle ages it was styled *commenda*, and in Italy *accomenda*. In the statutes of Pisa and Florence, it is recognized as far back as the year 1160; also in the ordinance of Louis-le-Hutin, of 1315; the statutes of Marseilles, 1253; of Geneva of 1588. In the middle ages it was one of the most frequent combinations of trade and was the basis of the active and widely extended commerce of the opulent maritime cities of Italy. It contributed largely to the support of the great and prosperous trade carried along the shores of the Mediterranean; was known in Languedoc, Provence, and Lombardy, entered into most of the industrial occupations and pursuits of the age and even traveled under the protection of the arms of the Crusaders to the City of Jerusalem. At a period when capital was in the hands of nobles and clergy, who, from pride or caste, or canonical regulations, could not engage directly in trade, it afforded the means of secretly embarking in commercial enterprises and reaping the profits of such lucrative pursuits without personal risks, and thus the vast wealth, which otherwise would have lain dormant in the coffers of the rich, became the foundation by means of this ingenious idea of that great commerce which made princes of the merchants, elevated the trading classes and brought the commons into position as an influential estate of the commonwealth."

The statement of Judge Bradford indicates the economic and business conditions which the limited partnership is intended to meet. In Venice in the middle ages the merchants under whose immediate direction the maritime ventures were carried on, were willing to be liable without limit for the debts incurred in their prosecution. The noble classes were willing to risk the amount contributed to the capital of an enterprise in return for a

share in the expected profits. Even had the modern business corporation been fully developed, as to-day, there would have been many cases in which *societe en commende* or limited partnership, would have been better fitted to the needs of the parties. In the limited partnership the limited partner may be sure of the active interest of the general partners, who are the directors of the enterprise, because such partners are, while the directors of a corporation are not, liable without limit for the debts. On the other hand, the general partners secure the additional funds necessary for the prosecution of the business, and yet remain in control of the business; while if a corporation is formed, all of the contributors to the capital stock acquire the right to take part in the management to the extent of a right to vote for the board of directors.

Again, turning a partnership into a corporation in many cases involves a loss of credit, because the partners who have up to the time of the transformation actually conducted the business, cease to be liable without limit for the debts.

Of course, there are many incidents of a corporation which under a great variety of conditions render it a more suitable business organization than a limited partnership or any other form of business association. The very fact that all the members are liable only for the amount contributed to the common fund makes the corporate form of business organization peculiarly adapted to large enterprises. In large enterprises the obligations incurred are large. Few would subscribe to the common fund if, by so doing, they risked having their entire fortunes swept away if the enterprise was unsuccessful.

The fact, however, that the modern corporation is a business association peculiarly adapted to meet many conditions does not mean that there is no need for other forms of statutory business associations. On the contrary, the aim of the legislature should be to enable business men about to associate for the purpose of carrying on a business, to choose, among several possible forms of organization, the one best suited to their special needs. It is a matter of regret that unlike the business men on the continent of Europe, or even England, the American business man is, in the great majority of cases, practically forced to-day to choose between only two forms; the common law partnership and the corporation.

One of the chief reasons why the American business man is thus limited in organizing a business association to the formation of a partnership or corporation, is the failure of the limited partnership acts to meet the business need for which they were designed.

The Conference on Uniform State Laws in preparing a limited partnership act had a larger problem to face than merely to choose the best among the conflicting provisions of existing state statutes. No existing limited partnership act, and no combinations of the provisions of existing acts would make a satisfactory uniform statute. Existing acts are in more than one respect fundamentally defective. A short statement of the nature of these fundamental defects will show the real nature of the problems with which the Conference was obliged to deal, and also serve to emphasize the fundamental differences between the existing acts and the new uniform law.

If a person in business by himself or if a partnership desires to secure additional capital without forming a corporation or other statutory business association,

there are at least three classes of contracts which can be made with those from whom the capital is secured. One, the ordinary loan on interest; another, the loan where the lender, in lieu of interest takes a share in the profits of the business; and third, those cases in which the person advancing the capital secures, besides a share in the profits, some measure of control over the business.

At first, in the absence of statutes, the courts both in this country and in England, assumed that one interested in a business, is bound by its obligations, carrying the application of this principle so far that a contract, where the only evidence of interest was a share of the profits, made one who supposed himself a lender, and who was probably unknown to the creditors at the times they extended their credits, unlimitedly liable as a partner to such creditors.¹ The influence of cases so holding lasted in England until the decision in *Cox v. Hickman*,² and in this country in some states until a much later period.³

Later decisions have much modified the earlier cases. The lender who takes a share in the profits, except possibly in one or two of our jurisdictions, does not by reason of that fact run the risk of being held as a partner.⁴ If, however, his contract falls within the third class mentioned, and he has any measure of control over the business, he at once runs serious risk of being held liable for the debts of the business as a partner, the risk increasing as he increases his control.⁵

¹*Grace v. Smith*, 2 W. Bl. 1998 (Eng. 1776); *Young v. Artell*, 2 H. Bl. 235 (Eng. 1793).

²H. L. Cas. 268 (Eng. 1860).

³See *Hackett v. Stanley*, 115 N. Y. 625 (1889).

⁴On this subject a leading opinion is that of the late Judge Doe of New Hampshire, in *Eastman v. Clark*, 53 N. H. 276 (1872).

⁵See specially the opinion of Sir George Jessel in *Pooley v. Driver*, L. R. 5 Ch. Div. 458 (Eng. 1876).

As stated, the first limited partnership act was adopted by New York in 1822; the other commercial states, during the ensuing thirty years, followed her example. These statutes were adopted and to a considerable degree interpreted by the courts during that period when it was generally held that any interest in a business made the person holding the interest liable for the obligations incurred in carrying it on. As a result the courts usually assumed in the interpretation of these statutes two principles as fundamental.

First. That a limited (or, as he is also called) a special partner, is a partner in all respects like any other partner except that to obtain the privilege of a limitation of his liability he can show that he has exactly conformed to the statutory requirements in respect to filing a certificate and refrained from participation in the conduct of the business.

Second. The limited partner, on any failure to follow the requirements in regard to the certificate, or on any participation in the conduct of his business, loses his privilege of limited liability, and becomes, as far as those dealing with the business are concerned, in all respects, a partner.

The courts in thus interpreting the statutes, although they made an American partnership with limited members something very different from the French *Societe en Commendite* from which the idea of the original statutes was derived, unquestionably carried out the intent of those responsible for their adoption. This is shown by the very wording of the statutes themselves. For instance, all the statutes require that all partners, limited and general, shall sign a certificate, and nearly all state that "If any false statement be made in such certificate all the persons interested in such partnership shall be liable for all the engagements thereof as general partners."

The practical result of the spirit shown in the language and in the interpretation of existing statutes, coupled with the fact that a man may now lend money to a partnership and take a share in the profits in lieu of interest without running serious danger of becoming bound for partnership obligations, has, to a very great extent deprived the existing statutory provisions for limited partners of any usefulness. Indeed, apparently, their use is largely confined to associations in which those who conduct the business have not more than one limited partner; and this for the obvious reason that while the certificate must state the amount and character of the contribution of each limited partner, a false statement by one limited partner, not only makes him a general partner, but makes all the other limited partners general partners also, although they had no reason to believe that the statement of their colleague was untrue.

Again, the fact that no one is hurt by a false statement in the certificate is immaterial. Being false in fact all the limited partners become liable as general partners. Thus in the Massachusetts case of *Haggerty v. Foster*,¹ the certificate stated that Foster had contributed cash to a certain amount, when he had given to one of the partners an order to sell United States Bonds belonging to him and then in the custody of the bank the par value of the bonds being equal to the amount of cash which the Certificate declared he had contributed. These bonds were actually sold above par and the proceeds acquired by the partnership so that instead of the creditors being hurt, they were actually benefited by the variation between the statement in the certificate and of the fact. Nevertheless, the court held Foster liable as a general partner for all the debts of the partnership, saying:

¹103 Mass. 17 (1869).

"It is wholly immaterial that the transaction at the time was honestly intended and understood by the parties to be sufficient; that the securities actually transferred afforded the means by which their cash value was in fact subsequently realized; or that creditors were not actually defrauded."

A reference to the Pennsylvania case of *Fourth Street National Bank v. Whitaker*,² will further serve to show why business men hesitate to take advantage of existing limited partnership acts. As in most states, the Pennsylvania Act, which has just been repealed by the adoption of the New Uniform Act, contained a section,³ which stated that:

"Every alteration which shall be made in the names of the parties, in the nature of the business, or in the capital or shares thereof, or in any manner specified in the original certificate shall be deemed a dissolution of the partnership, and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership."

That is, all the limited partners become unlimitedly liable for all the debts of the partnership, unless the partnership "is renewed as a special partnership." To renew as a limited partnership at the end of the term for which the first limited partnership has been formed, a new certificate must be filed, and if this new certificate contains any false statement, no matter how innocently made, all the limited partners become unlimitedly liable. In the case referred to A, B, C, *et al.*, formed a limited partnership under the Pennsylvania Act of 1836. The original certificate correctly set forth that A and B were limited partners and had contributed \$100,000 each. At the end of the term for which the partnership was cre-

²170 Pa. 297 (1895).

³Act of March 21, 1836, P. L. 143, Sec. 12.

ated the partners desired to renew. Acting under the supplemental Act of March 30, 1865,¹ they applied for an appointment of an appraiser of the goods belonging to the partnership, and on his report to the effect that these were sufficient to pay all the debts of the firm and leave a balance of more than the original contributions of the limited partners, they filed a renewal certificate, in which they set forth that the amount of their original contributions remained unimpaired. There appears to have been no question that in making this statement they were acting in good faith. As a matter of fact, however, while the property of the partnership was probably more than \$200,000—the aggregate of the contributions of the limited partners—the debts were more than sufficient to wipe out all assets, and, therefore, the contributions of the limited partners were more than impaired; they were lost. A and B, because of this false statement, were held unlimitedly liable for all the partnership debts. The court could hardly have avoided this result in view of the wording of the act, although the total possible harm which the unintentional false statement could have possibly done to the creditors was \$200,000. Small wonder that statutes, the language of which necessitates such decisions, are of little practical use to individuals or partnerships seeking contributions to their business capital, and that the acts thus fail to meet the economic need which lead to their adoption.

Practically all the differences between the new Uniform Act and the existing statutes are due to the desire of the Conference to present to the legislatures of the several states an act, under which a person willing to invest his money in a business for a share in the profits, may become a limited partner, with the same sense of

¹P. L. 446.

security from any possibility of unlimited liability as the subscribers to the shares of a corporation.

The act proceeds on the assumption that no public policy requires a person who contributes to the capital of a business, acquires an interest in the profits, and some degree of control over the conduct of the business, to become bound for the obligations of the business, provided creditors have no reason to believe at the times their credits were extended that such person was so bound. It, therefore, deals in a radically different manner from former limited partnership acts with the consequences of a false statement in the certificate.

Section 6 provides that if there is a false statement in the certificate, one who suffers loss by reliance on such statement may hold liable any limited partner who knew the statement to be false when he signed the certificate, or within sufficient time before the statement was relied on to have had the certificate canceled or amended.¹

Again, suppose a person is asked to contribute to the capital of a business conducted by a person or partnership, and that he does so, believing he has become a limited partner, but the certificate required to be filed, is not filed, or being filed is so defective that no limited partnership has been formed. Under existing acts a person in the position described runs a danger of becoming a general partner, if he takes a share in the profits, and a still greater danger if he exercises a limited partner's right to look over the books and give advice to his supposed co-partners. It is immaterial that he may have thought all things had been done necessary for the formation of the limited partnership, and also that the persons doing business with the partnership may

¹Sec. 25 (3).

at the time they extended credit believe he was a limited partner. Section 11 of the Uniform Act meets this situation by providing that a person who has contributed to the capital of a business conducted by a person or partnership, erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income.

Under existing acts a limited partner is in effect a general partner securing limited liability by complying with the requisites stated in the act. In the Uniform Act the person who contributes the capital, though in accordance with custom called a limited partner, is not in any sense a partner; he is a member of an association having two classes of members, the general partners, and the contributors called limited partners.

As limited partners are not partners securing limited liability by filing a certificate, every detail of which must be complied with, the association is formed when substantial compliance in good faith is had with the requirements for a certificate.

Under existing acts the question whether a limited partner having paid his contribution in full, and, thereafter, loaning money to the partnership shall be treated in respect to such loan as a partner making an advance or as an ordinary creditor, has been the subject of conflicting decisions,¹ although logically under the theory that a limited partner is in all respects a partner, ex-

¹20 N. Y. 178; 44 Pa. 150; 35 Conn. 463.

cept that his liability is limited, it follows that for further advances beyond his contributions he should be treated as a partner and postponed to the other creditors. Under the Uniform Act, however, a limited partner, not being in any sense a partner, is not debarred from loaning money or transacting other business with the partnership as any other non-member; provided he does not, in respect to such transaction, accept from the partnership collateral security, or receive from any partner or the partnership any payment, conveyance or release from liability, if at the time the assets of the partnership are not sufficient to discharge its obligations to persons not general or limited partners.²

So, also, as limited partners are not in the Uniform Act principals in partnership transactions, their liability, except for known false statements in the certificate,³ is to the partnership, not to the creditors of the partnership.⁴ The general partners cannot, however, waive any liability of the limited partners to the prejudice of such creditors.⁵

Perhaps that section of the act which will have as great practical effect as any in inducing small partnerships desiring additional capital to form a limited partnership under the act, rather than a corporation, is section 13, which permits a person to be a general partner and a special partner at the same time. This provision enables the partners to divide the entire capital of the partnership into shares, and themselves subscribe to the partnership fund on the same basis in respect to a share in the profits and as to capital in case of dissolu-

²Sec. 13.

³Sec. 7.

⁴Sec. 17.

⁵Sec. 17 (3).

tion as outside contributors. A person who is a general, and also at the same time a limited partner, has all the rights and powers and is subject to all the liabilities of a general partner, except that, in respect to his contribution, he has the rights against the other members which he would have had if he were not also a general partner. If, therefore, A, B and C are limited partners, A and B being also general partners, on the winding up of the partnership after the payment of all debts due outsiders, the remaining assets, would be used first to pay back pro rata the contributions of A, B and C as limited partners.

Other sections of minor, but nevertheless of considerable importance deserve notice.

Section 9 makes clear the rights and powers of a general partner, a matter which existing acts fail to touch. The Uniform Act declares that a general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

“(a) Do any act in contravention of the certificate.

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(c) Confess a judgment against the partnership.

(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(e) Admit a person as general partner.

(f) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate."

Section 10 deals with the rights of a limited partner; providing that he shall have the right to receive the share in the profits stipulated for in the certificate,¹ and a return of his contribution after all liabilities of the partnership to persons not general or limited partners have been paid.² It also declares that a limited partner shall have the same rights as a general partner to

"(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) Have dissolution and winding up by decree of court."

Perhaps the detail with which the Uniform Act covers subjects of practical importance which are only dealt with in a general way by existing acts, is best shown by the different methods employed in treating the subject of assignment of a limited partner's interest. In the original limited partnership acts this subject was treated logically under the theory that a limited partner was in all respects except as to his liability a partner. Thus, an attempted assignment of his interest by a limited partner was as effective to produce a dissolution of the partnership as an assignment by a general partner of his interest. By supplemental or amending acts, however, limited partners were permitted to assign. The Pennsylvania statute on the subject, the Act of April 16,

¹Sec. 15.

²Sec. 18.

1858, one of the acts specifically repealed by the recent act putting in force the Uniform Act, is typical. It provides that a limited (special) partner, with the assent of his partners, in writing, first had and obtained, may sell or assign his interest in a limited partnership without causing thereby a dissolution of the partnership. The treatment of the subject in section 19 of the Uniform Act is as follows:

"(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a partner admitted to all the rights of a limited partner who had died or has assigned his interest in the partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with Section 25.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under Sections 6 and 17."

Section 22 adopts the same procedure to subject the

interest of the limited partner in the partnership to the payment of his separate creditors as is adopted in the Uniform Partnership Act to subject the interest of the partner to the payment of his separate debts.¹ Section 22 provides:

"On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require."

In those states where a creditor on beginning an action can attach debts due the defendant before he has obtained a judgment against the defendant, the commissioners recommended that paragraph 1 of this section read as follows:

"On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver and make all other orders, directions and inquiries which the circumstances of the case may require."

Among the pitfalls for the unwary limited partner under prior acts, are the provisions for renewal certificates, if it is desired to continue the limited partnership after the time originally stated in the certificate for its termination. Thus section 11 of the Pennsylvania Act of 1836 provided as the statutes of the great majority of the states still provide, that

"Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein re-

¹See section 28 of the Uniform Partnership Act.

quired for its original formation, and every such partnership which shall be otherwise renewed and continued shall be deemed a general partnership."

The unfortunate consequences of any false statement in a renewal certificate, though innocently made, has been shown. In the Uniform Act, the limited partner is fully protected from being caught in the trap of unlimited liability, and at the same time, the provisions for amending and canceling a certificate are set forth in an administrative detail not found in the more or less vague language of existing acts. Sections 24 and 25 of the Uniform Act deal with the question of when the certificate shall be canceled or amended,¹ and the requisites for cancellation and amendment.² If any statement in the original certificate has ceased to be true the certificate contains a false statement. Any limited partner knowing the statement to be false within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate under the provisions of section 25, is, as previously explained, under section 6 liable to one who suffers loss by reliance on such statement. Knowing that the certificate contains by reason of changed circumstances, a false statement, it is his duty to see that the certificate is amended to correspond with present facts. But under section 25 (1) a writing to cancel or amend a certificate must be sworn to by all the partners, general and limited. Paragraphs 3 and 4, therefore of this section provide that a person desiring the cancellation or amendment of a certificate, if any of the other limited or general partners refuse to join him in signing the required writing, may file in the proper court a petition for an order of cancellation or amendment. The certificate is actually amended or can-

¹Sec. 24.

²Sec. 25.

celled, as the case may be, when there is filed for record the proper writing duly signed, or a certified copy of the order which the court has made in respect to the petition.

Under section 30 of the Uniform Act any existing limited partnership formed under any statute of the state prior to the adoption of the act, may become a limited partnership under the Uniform Act; or, if its members prefer, they can continue to be governed by the provisions of the act under which their limited partnership was formed until the expiration of the term; and even at the expiration of the term, they may renew under the provisions of the act under which their partnership was formed, provided the original partnership articles contained a clause of renewal.

In Pennsylvania the adoption of the Uniform Act was complicated by the fact that there were two acts in the state under which limited partnerships could be formed. The act under which practically all the limited partnerships in the state were organized was the Act of March 31, 1836, its amendments and supplements; which act, as has already been pointed out, was practically identical with nearly all other limited partnership acts throughout the United States. There was also the Act of May 9, 1899, which provided for the formation of two kinds of business associations; a joint stock association, that is, one in which the liability of all the members is limited to the amounts contributed to the common stock, and the other a true limited partnership, that is, an association in which the liability of some, but not all, of the members was limited to their contributions to the common stock. The commissioners on Uniform Laws not only recommended the adoption of the Uniform Act, but the repeal of all other acts under which a limited part-

nership may be formed. In Pennsylvania, therefore, in order to carry out this recommendation, it was necessary to pass two acts: one, the Uniform Limited Partnership Act, containing a section specifically repealing the Act of March 21, 1836, and its numerous amendments and supplements; the other, an act amending the Act of 1899 in such a way as to confine hereafter its scope to the organization of business associations in which the liability of all the members is limited. In each act specific provisions had to be made for existing partnerships formed under the act repealed and amended.

These details are mentioned not only because they have practical interest in a state which has recently enacted the Uniform Limited Partnership Act, but also because they illustrate the fact that those locally interested in the adoption of uniform acts are often confronted with problems of no little difficulty in preparing the act for adoption by their state legislature. Add to this that the work of looking after the passage of any act through the legislature requires the exercise of tact, also often involves the expenditure of much time, and that the commissioners serve without pay, and it is only a matter of wonder that these commercial acts have been adopted to as great an extent as they have. While it is true that in some states the commissioners have failed to secure the adoption of more than one or two of their commercial acts, in others a considerable proportion have already become law, while in such states as Maryland, Massachusetts and Pennsylvania, where the commissioners have shown extraordinary diligence, practically all—in Pennsylvania all—the uniform commercial acts are already part of the law of the state.

WILLIAM DRAPER LEWIS.

Law School, University of Pennsylvania.

APPENDIX C TO BRIEF OF RESPONDENTS VETTE, ZUNCKER,
 REGENSTEINER, CLEMENT STUDEBAKER, JR., AND
 GEORGE M. STUDEBAKER TO PETITION FOR CERTIORARI.

Mark H. Crehan,	}
Appellant,	
v.	
Ralph C. Megargel <i>et al.</i> ,	}
Respondents.	

Decided by Court of Appeals of New York, 234 N. Y. 67, 136 N. E., same case as *Crehan v. Megargel* (N. Y. Sup. Ct. App. Div. 1922), 192 N. Y. S. 290.

(Opinion filed July 12, 1922.)

This is an appeal from a judgment of the first Appellate Division reversing an order of the Special Term and sustaining demurrers to the complaint and dismissing the latter.

Sydney R. Wrightington for appellant.

Clinton J. Ruch for respondents Megargel *et al.*

Richard T. Greene for respondents Corinne Bailey, etc.

OPINION.

HISCOCK, *Ch. J.* This action is brought against defendants as alleged members of the firm of Megargel & Company to recover upwards of \$500,000 damages for breach of contract made by said copartnership in the State of Massachusetts to carry out certain stock transactions for plaintiff. The complaint sets forth four separate causes of action, each one dealing in different form with the same transactions and alleged defaults, and each is demurred to by every defendant on various grounds including the one that it does not state facts sufficient to establish any liability. The latter ground of demurrer is the only one which we deem it necessary to consider and in

this connection we shall not review in detail all of the allegations of the complaint, for their sufficiency as setting forth a cause of action against the defendants of the character indicated is so clear except at two points that it is unnecessary to do this. We shall confine ourselves to outlining those allegations which present the interesting points in the case which require discussion and it will be assumed that the complaint in other respects is sufficient under its allegations to set forth a cause of action.

In two of the causes of action it is alleged in effect that the present defendants, together with other persons, were general members of the copartnership of Megargel & Company, which committed the breach of contract and caused plaintiff the damages as alleged in the complaint; also that before the commencement of this action plaintiff brought an action against such other persons in the State of Massachusetts and there recovered judgment against them for the same causes alleged in this action; that the present defendants were not joined in that action because they were non-residents of the State of Massachusetts and were beyond the reach of its process. The question to be discussed in connection with these causes of action is the one whether said judgment in Massachusetts operated to merge any cause of action against the present defendants and bar this action.

The other two counts, containing the same allegations concerning the Massachusetts judgment, attempt to set forth a cause of action against the defendants on the theory that through failure to comply with the statutes of this state governing the organization of limited partnerships, they have become liable as general partners in the copartnership of Megargel & Company. These allegations are to the effect that the attempt was made in this state to organize said limited copartnership with the defendant Ralph Megargel as a special partner;

that the other defendants really furnished the capital which he nominally contributed as such special partner; that the certificate and affidavit made and filed as required in the case of the organization of a limited partnership were not sufficient or truthful and that, therefore, said other respondents became subject to the penalty imposed by section 34 of the Partnership Law (Cons. Laws. Ch. 39) which provides that "if any false statement be made in any such certificate or affidavit made either upon the formation or renewal or continuance * * * of such partnership * * * the persons interested therein shall all be liable as general partners." The controlling question here is the one whether defendants were "persons interested" and thus became liable as members of the copartnership in the manner claimed and we shall consider first the two counts presenting this question.

The arrangement under which the other defendants furnished to Megargel the money which he contributed to the limited partnership was set forth in a written agreement, and while the complaint contains certain allegations to the effect that said arrangement was invalid and an unlawful and ineffectual device to evade the law regulating the formation of limited partnerships and that these defendants and not Megargel contributed the capital and became interested in the copartnership these allegations as made are the statements of mere legal conclusions and the sufficiency of plaintiff's complaint is to be tested by the agreement itself, which is not effectively contradicted, altered or condemned, if otherwise valid, by any of said allegations. We, therefore, turn to it for the purpose of determining whether under it defendants other than Megargel became "persons interested" in the partnership so as to become liable as general partners when there was failure to comply with the statute governing the organization of limited partnerships.

The agreement is too long to be quoted or even to be summarized except in the briefest manner possible, having in view the controlling features. It provided for the payment by the other parties, who included these defendants, of certain sums of money to Megargel under a trust by which he was to contribute said moneys as his capital in a special partnership to be organized. FIRST, as between him and the other members of said proposed partnership said moneys when received were to be contributed "in his own name and as his sole and individual special capital" to the partnership. He and the moneys so contributed were in all respects to be subject to the provisions of the partnership agreement which was annexed to the trust agreement and to all laws governing such a partnership, and the subscribers (these defendants) were to "have no right of accounting or other rights whatsoever against the said partnership * * *", but were "in all respects (to) be strangers thereto," and "as regards the trust property and estate or any of the rights and interests guaranteed" they should "look only to the party of the second part (Megargel) or his representatives," except that in the event a dissolution of the partnership should be caused by the death of Megargel and the consequent termination of the trust created the subscribers were entitled to receive from the survivors of the partnership the amount of special capital that might remain after final liquidation of the business thereof. SECOND, as between Megargel and the subscribers (defendants) the relation of trustee and *cestui que trust* was created. Megargel on payment to him of the respective amounts subscribed was to issue receipts to the several subscribers of which receipts a registry and record were to be kept. "Upon the receipt by him of any interest or profits to which he might (may) be en-

titled as special partner as aforesaid" the same forthwith were to be distributed through the agency of a trust company amongst the registered holders of said receipts. Various provisions were made for protecting and safeguarding the relations between Megargel and the subscribers but all of these were based upon a relationship of the copartnership solely with Megargel as special partner and none of them in any manner qualified that exclusive relationship or brought the subscribers into the slightest relationship with the copartnership or the members thereof other than Megargel or gave them any voice in or supervision over the affairs of said copartnership.

It was primarily provided that this relation and condition between Megargel and the subscribers were to continue for five years, but the further provision was made between the subscribers that if it should be terminated by the death of Megargel within that time, on the consent of the surviving members of the partnership and the agreement of not less than 51 per centum in amount of the subscribers a new limited or special partnership might be formed with a new special partner.

For the purpose of establishing that under this agreement the subscribers became "interested" in the partnership plaintiff seeks to bring to his aid two different theories of this agreement—one that it is a valid instrument as between the parties to be construed as it is written, the other that it is invalid as providing for an undue suspension of the ownership of the property thereby covered.

Pursuing the first theory the basis of plaintiff's claim is the provision in the Partnership Law relating to limited partnerships already referred to and which provides that if any false statement be made in the certifi-

cate or affidavit essential to the formation of such a partnership "the persons interested therein shall all be liable as general partners." Then plaintiff himself upon this provision he says "The essential claim * * * in this case is that these defendants are the ones who actually contributed the special capital to the partnership of Megargel & Company" and each of said defendants "had a legal interest in said alleged limited partnership as a special partner therein of the time of its attempted formation." Thus the fundamental question becomes one of interpretation of the words "persons interested," in the statute just quoted, as a means of reaching the decision whether these defendants were such persons interested and who, therefore, became liable as general partners because of false certificates and false affidavits as alleged in the complaint.

In the consideration of defendants' liability counsel have discussed the somewhat general question whether the words "persons interested" in the statute should ever be interpreted to mean any one other than him who would be a general partner unless he secured a limited liability under the statutes by compliance with the terms thereof. Under the claims advanced by plaintiff we think that the controversy before us may be decided by the determination of what is perhaps a more concrete question. If the defendants other than Megargel did not contribute capital to the limited partnership in the sense claimed by plaintiff, then we fail to see how on any theory they were "persons interested" within a reasonable interpretation of the statute. We do not think that they did contribute special capital to the partnership in any such manner or with any such result as is claimed.

Clearly they did not contribute capital in the manner, under the conditions and with the results contemplated

by the statute as necessary to establish the status of a special partner. The statute provides that one who desires to enter a copartnership as a special partner shall not only contribute in his own name a specific sum as capital but that he shall establish his status and relationship with the other individuals who are to be copartners by entering into an agreement with them which is to be filed, recorded and published and in which, amongst other things, is to be stated the names of all the partners, including the special partner and the amount of capital which such special partner has contributed; that the name of the special partner shall be posted and that he shall have certain rights to examine into the state and progress of the partnership business and advise as to its management and to receive interest and profits on his investment. These defendants come within none of these provisions.

As between them and the other members of the copartnership they made no contribution of capital, signed no partnership agreement and established no relationship with the copartnership, but were expressly debarred therefrom, and secured no benefit from such copartnership except as it might come in an indirect way through accountability of the special partner for the profits which he had received from the copartnership. On the face of the written agreement they were wholly disconnected from the partnership and utter strangers to its members, its affairs and its capital save in the one instance that in case of the death of their trustee and the dissolution of the firm they were entitled to receive from the firm the residue, if any, of the moneys to which their trustee would have been entitled if living. But this was the arrangement which equity would have enforced without any specific agreement and did not change the effect of their agreement.

Neither did they in our opinion contribute capital in a manner which, while not such as contemplated by the words of the statute, nevertheless came within its spirit and purpose. Of course we do not intend to negative the proposition made by the plaintiff that an arrangement might be made by one who was not named as special partner which would be so designed to evade the statute and give him the rights of that status that he would be held liable under the penalties of the law. Such was the basis of the decision in *Buckley v. Bramhall* (24 How. Pr. 455), greatly relied on by the plaintiff. The court held in that case that the person sought to be charged with a general liability had attempted to evade the law by what was characterized a "flimsy contrivance to evade the statute" and, whether this interpretation of the facts was correct or not, that was the theory on which the defendant was held. No such situation is presented to us by the present complaint. While as we have stated there are various allegations of liability upon the part of the defendants under the statute these are conclusions based upon an interpretation of a written instrument and that instrument, read as it is written, establishes between the subscribers and the partnership no contribution of capital, no relation of partners and no contact with or supervision over partnership affairs. The trust is an insurmountable barrier raised between them and the partnership and separating them from an interest in its affairs, and it seems to us to be a valid arrangement and to come within the principles which have been approved both by eminent text writers and the decisions of various jurisdictions in the case of so-called commercial or business trusts as substitutes for business corporations. (Burdick on Partnerships (3d ed.), pp. 43, etc.; Thompson on Business Trusts, etc., p.

28; *Rhode Island Hospital Trust Co. v. Copeland*, 39 R. I. 193; *Williams v. Milton*, 215 Mass. 1; *Home Lumber Co. v. Hopkins* (Kansas Sup. Ct.), 190 Pac. Rep. 601.)

Nor if that could be potential to change our outlook are we able to perceive that this view results in any defeat of a public policy as evinced in the statute relating to limited partnerships. The object of that statute and its predecessors in enactment was to provide for a combination of capital and skill and to enable those who had the former to contribute it to a partnership without other liability than loss of their investment so long as they complied with the statute and refrained from exercising the powers and privileges of general partners. *The interest of a creditor like the plaintiff is that the special capital shall be honestly and fully contributed as provided by the statute and he has no legal or direct interest in the identity of the special partner so long as he contributes his capital and observes all the requirements of the statute.* (*White v. Eiseman*, 134 N. Y. 101; *Webster v. Lanum*, 137 Fed. Rep. 376.) We fail to see how he is interested in the fact that the special partner has borrowed the capital which he contributes or has received it under some other form of arrangement even less compelling upon him than a loan, so long as the arrangement does not result in a violation or evasion of the statute and of the requirement that the special capital shall be contributed and that the special partner shall not assume the status of a general partner.

Swinging from the viewpoint that under this trust agreement, if valid, respondents were contributors of capital to the special partnership, plaintiff next argues that the trust agreement on its face was invalid as providing for the suspension of ownership of personal property for a fixed term in violation of section 11 of the

Personal Property Law (Cons. Laws, Ch. 41), and that defendants thus became "tenants in common of the fund which was contributed to the capital of the firm and the alleged trustee in contributing it acted as their agent." We believe that there may be various answers to this contention but we shall only consider three of them.

In the first place, we do not think that a fair interpretation of the trust agreement does provide for a suspension of the ownership of the fund which was to be contributed for a fixed period which might outrun two lives. Undoubtedly, as claimed by plaintiff, the trust agreement executed by the defendants and the partnership agreement are to be considered together. The trust agreement provided for the payment of moneys to Megargel as trustee to be contributed by him to the partnership under the articles of agreement for that partnership and those articles did provide primarily for a partnership to continue for the period of five years. Clearly, however, the combined effect of the trust agreement and of the partnership agreement primarily was to limit the former to the life of the trustee and thus any conflict with the statute was avoided. It was, however, secondarily provided in the trust agreement that in case the partnership should be dissolved by the death of the trustee (as undoubtedly would result from said death) "the subscribers agree with each other that with the consent of the surviving partners a new or limited special partnership shall be formed with a special partner to be designated by an appointment in writing to be signed by not less than 51 per centum in amount of the subscribers and that the amount of special capital * * * which as beneficiaries to the trust hereby created they may be severally entitled to receive upon the liquidation of the old firm shall be paid over by them or caused to

be paid to such person and the same shall be contributed by him as special capital to the new partnership. The provisions of this section shall apply to successive dissolutions caused by death of the special partner prior to the expiration of the five year period above mentioned." We think that the only effect of these provisions was an agreement amongst the subscribers, disconnected from the members of the partnership, that if the partnership was dissolved by the death of their trustee, they would enter into negotiations for the formation of a new partnership to which, if the negotiations were successful, they would contribute as capital the moneys which they received upon the dissolution of the old partnership. We think that this secondary provision was too contingent and uncertain to amount to an agreement, when taken into consideration with the other provisions, to suspend the ownership of property for a fixed period of years. The subscribers upon the dissolution of the old firm were entitled to the capital which had been contributed and it thus came into their ownership. It is possible that if they failed to form a new firm as provided they might be liable upon a contract to someone who was injured by such failure, but that, we think, would be the limit of the provisions which they undertook.

In the second place, we are unable to conclude that plaintiff in this action can attack the validity of the trust agreement even if it be subject to successful attack. He is not a party to it. He has no interest in the property which is the subject of the trust. He is not seeking to enforce any lien thereon which is obstructed by the trust agreement. He is not defending himself against any attack which is based upon the trust agreement. He is an utter stranger to the entire proceeding, simply seeking

to have an agreement held invalid in order that he may establish a personal liability against the parties who entered into it. No authority has been cited which sustains his right to make such an attack and we know of no principle which authorized it. (*Bohn Mfg. Co. v. Hollis*, 54 Minn. 223; *Nat. Fire Proofing Co. v. Mason, Builders' Assn.* 169 Fed. Rep. 259; *Mallory v. Thomas*, 71 Kan. 562; *First Nat. Bank v. Nat. Broadway Bank*, 156 N. Y. 459.)

But lastly even if we should adopt plaintiff's view upon both of the foregoing points we do not see how it would carry him forward to any position of success. The subscribers placed their money in the hands of Megargel under an authority contained solely and exclusively in this trust agreement. That was his only warrant for investing the moneys which he had received as special capital in the partnership. If it now should be held that this instrument was void and conferred no such authority we fail to see how the relationship of principal and agent would be established in respect of the contribution of this capital or how an unlawful trustee would be turned into a lawful agent. It would seem that under such a contingency as that Megargel would have in his hands some money contributed by the subscribers without any authority for its use and that the result would be either that he might retain the moneys or that the subscribers might disaffirm everything that he had done with it and demand its immediate repayment.

Thus we are led to the conclusion that in the statement of the two causes of action which we have been discussing the complaint does not state facts sufficient to show any liability upon the part of any of the respondents except the respondent Megargel. As to him the

complaint does state a cause of action subject to the consideration of the question now to be discussed in connection with the other two causes of action.

It will be remembered that in these causes of action defendants are alleged to have been general partners, and the only question to be discussed is the one whether the judgment recovered by plaintiff in the courts of Massachusetts upon the same causes of action here involved against several other members of the firm of Megargel & Company operated to merge the cause of action against these defendants who were not joined because non-residents and not subject to process in said state. The claim that the Massachusetts judgment did so operate is based on the common-law rule that a cause of action against several joint debtors, as copartners are, is merged in a judgment against part of them. There is no allegation that this common-law rule has been changed by statutory enactment in the state of Massachusetts and, therefore, we assume that it exists and we shall assume without deciding that under the full faith and credit clause of the Federal Constitution we are compelled in this action to give to the Massachusetts judgment the effect claimed for it if such would be the effect at common law. We do not, however, think that under the best established rule the judgment under the circumstances set forth did have the effect claimed for it.

This rule of merger of joint obligations is a technical one inherited from the common law, which often has been productive of injustice and which is enforced by courts with more or less restlessness and repugnance. Whatever the origin of the rule, it is qualified to-day by the principle of election, it being held that where a creditor holding the joint obligation of several parties proceeds to recover judgment against part of them it is evidence

of a choice to thus hold part and let the others go. Therefore, various exceptions have been engrafted upon the rule to the effect that when the action of the creditor is controlled by circumstances which negative any idea of an election he will be exempted from the effects of the judgment as a merger. (*U. S. Printing & Lith. Co. v. Powers*, 233 N. Y. 143.)

Whatever course of reasoning may have been adopted in various decisions, it is in accordance with this rule that it has been held in many jurisdictions that where a creditor bringing suit upon a joint obligation is unable to get service upon some of the obligors because they are beyond the jurisdiction in which he is acting, his judgment there recovered will not be regarded as a bar against the obligors not served, when he is able to obtain jurisdiction of them in some other forum. That doctrine was accepted by the courts of this state in an early decision which so far as we are aware has never been questioned and directly or in effect has been adopted by the courts of many other states. (*Brown v. Birdsall*, 29 Barb. 549; *Third Nat. Bank of St. Louis v. Graham*, 174 App. Div. 503; *Campbell v. Steele & Co.* 11 Penn. St. 394; *National Bank v. Peabody & Co.* 55 Vt. 492; *Wood v. Watkinson*, 17 Conn. 500; *Merriman v. Barker*, 121 Ind. 74; *Rand v. Nutter*, 56 Me. 339; *Tibbetts v. Shapleigh*, 60 N. H. 487; *Yoho v. McGovern*, 42 Ohio St. 11; *Bradley Eng. etc. Co. v. Heyburn*, 56 Wash. 628; *Beck & Pauli Lith. Co. v. Wackers & Birk B. & M. Co.* 76 Fed. Rep. 10.)

Holding, therefore, that the weight of authority in this country is to the effect that the common-law rule of merger does not apply to a judgment recovered as was plaintiff's, in favor of those who were beyond the jurisdiction of the court which rendered it, we are not bound to give to the Massachusetts judgment the effect claimed by the defendant.

Coming then to the present suit with no such bar in his way the plaintiff's right to proceed is additionally secured by section 1946 of the Code of Civil Procedure which provides: "Where for any cause, one or more partners have not been joined as defendants in an action upon a partnership liability, and final judgment has been taken against the persons made defendants therein, the plaintiff, if, the judgment remains unsatisfied, may maintain a separate action upon the same demand, against each omitted partner."

This section clearly authorized the commencement of action against these defendants upon the facts set forth in the cause of action under review unless it be true as claimed by defendants that it required a separate action to be brought against each partner who had been omitted in the Massachusetts action. We should be reluctant to give any such narrow construction as that to this remedial provision and which if adopted would require in the present case a multitude of actions instead of one. That question, however, is not before us for there is no demurrer on the ground of such improper joinder of defendants or causes of action.

Therefore, we conclude that the allegations respectively of the second and fourth causes of action do set forth facts sufficient to constitute a cause of action against these defendants and that the demurrers to them should be overruled.

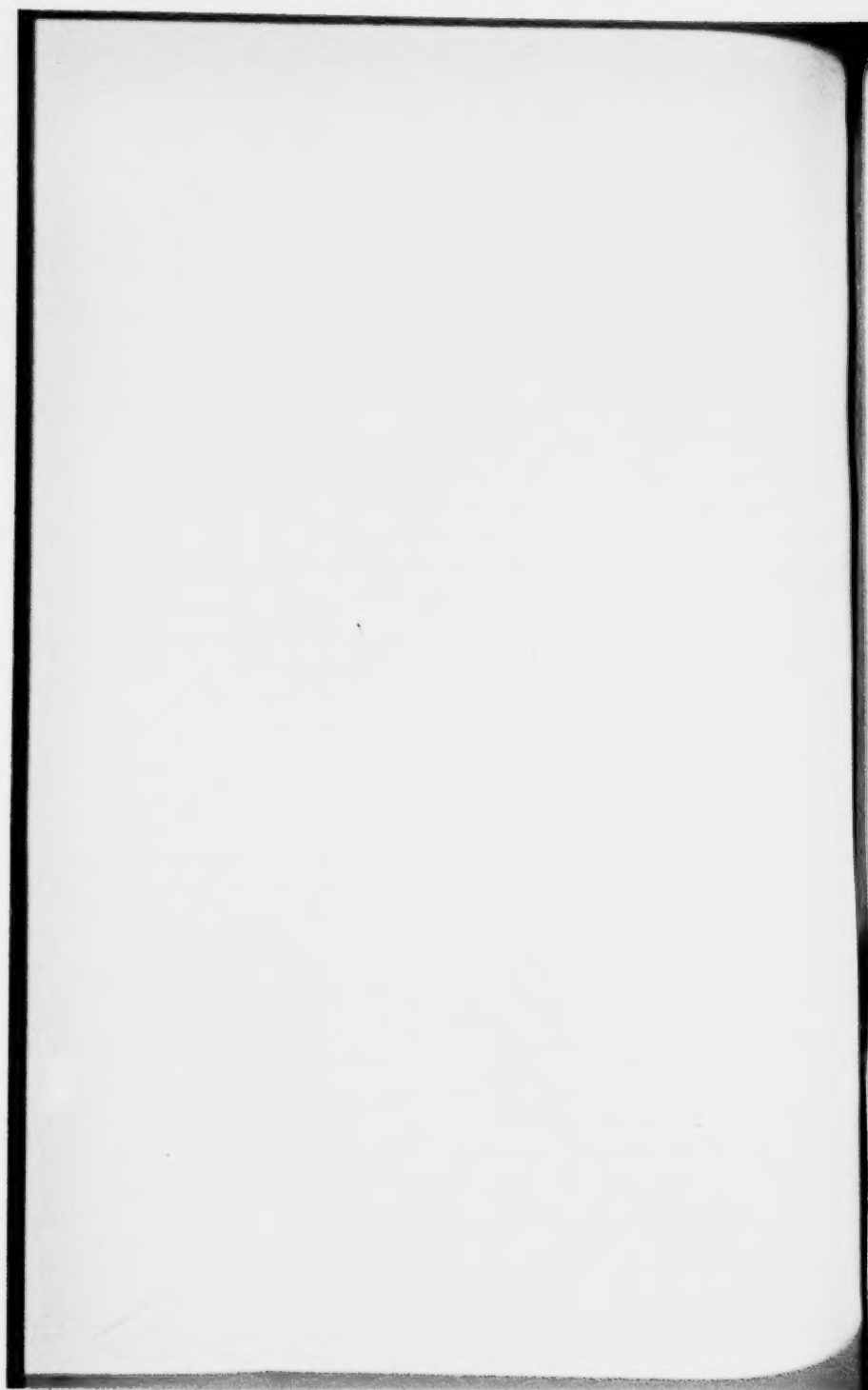
Accordingly the judgment of the Appellate Division appealed from in so far as it reverses the order of the Special Term overruling the demurrer of each of the defendants to the first and third causes of action and dismissing the complaint, except as to the defendant Ralph Megargel, should be affirmed and said judgment in so far as it reverses the order of the Special Term overruling

the demurrer of the defendant Ralph Megargel to said causes of action and in so far as it reverses the order of said Special Term overruling the demurrer of each of the defendants to the second and fourth causes of action and dismissing the complaint should be reversed and the order of the Special Term affirmed, with costs in this court and the Appellate Division and with leave to said defendants to withdraw demurrers and plead over within twenty days on payment of said costs.

HOGAN, CARDOZO, POUND, McLAUGHLIN, CRANE and ANDREWS, *JJ.*, concur.

Judgment accordingly.*

*Additional facts in the case of *Orehan v. Megargel*, *supra*, are set forth in the opinion of the Supreme Court of New York, Appellate Division, in the same case, 192 N. Y. S. 290.



FILED
SEP 28 1922

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1921.

No.  59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, JOHN JANCA, I. FIEGEL, FRED MAYER,
E. H. ALLEN, GEORGE B. GIFFORD AND HAROLD
LACHMAN,

Petitioners,

vs.

HENRY VETTE, PETER M. ZUNCKER, THEODORE
REGENSTEINER, CLEMENT STUDEBAKER, JR.,
GEORGE M. STUDEBAKER, FRANK A. HECHT AND
CLARA K. HECHT, EXECUTORS OF THE WILL OF FRANK
A. HECHT, AND JOSEPH M. FINN,

Respondents.

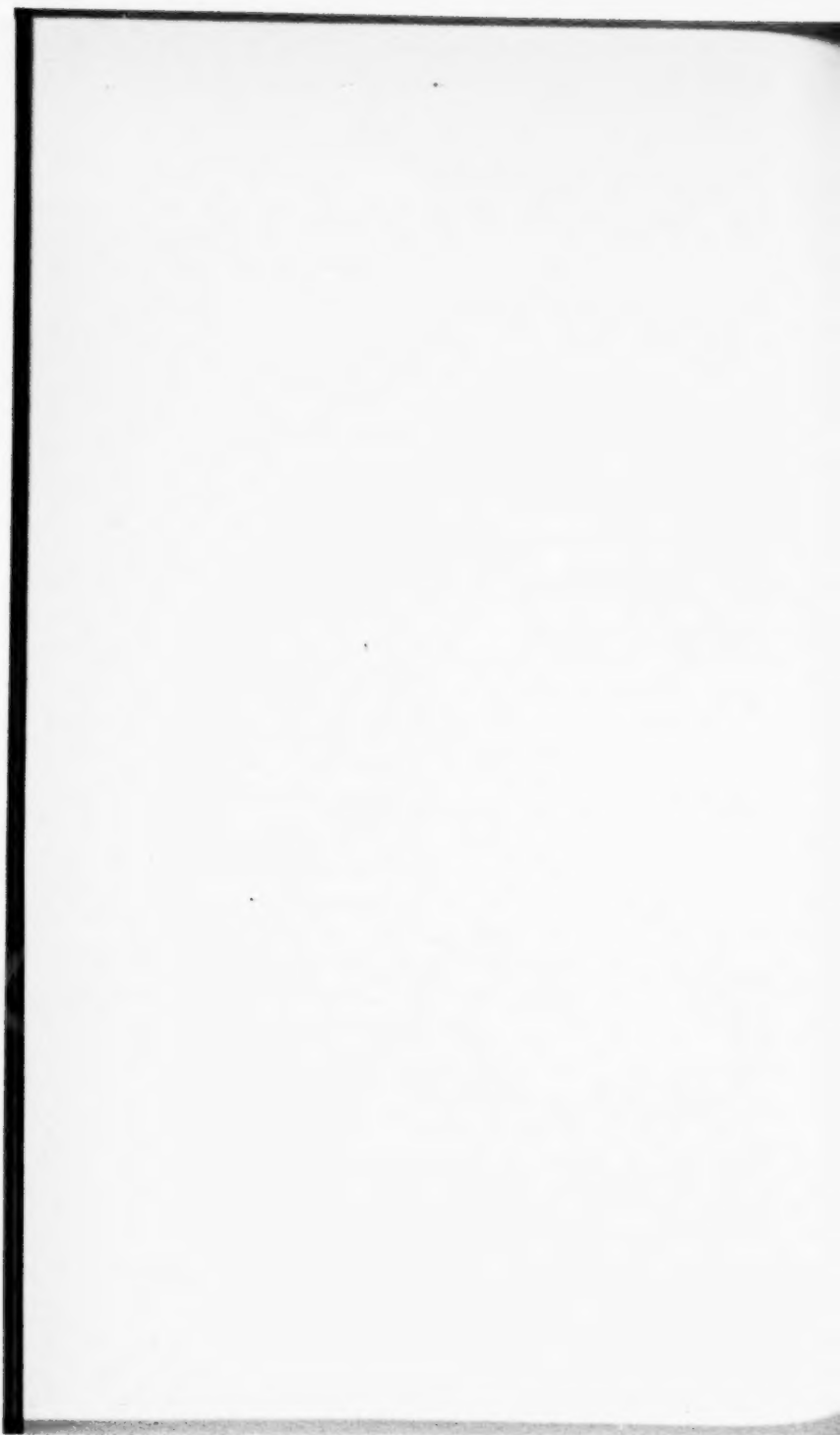
BRIEF OF RESPONDENTS VETTE, ZUNCKER, REGENSTEINER,
CLEMENT STUDEBAKER, JR., AND GEORGE M. STUDEBAKER,
IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO
THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

HARRY P. WEBER,
GEORGE W. MILLER,

*Attorneys for Respondents, Henry
Vette, Peter M. Zuncker and Theo-
dore Regensteiner.*

GEORGE T. BUCKINGHAM,
DONALD DEFREES,
STEPHEN E. HURLEY.

*Attorneys for Respondents, Clement
Studebaker, Jr., and George M.
Studebaker.*



INDEX.

	PAGE
Statement of facts.....	1-14
Arrangement of April 2, 1917.....	2
Abandonment of arrangement of April 2, 1917	2-3
Formation of firm of Marcuse & Co.....	3
The Hecht-Finn Trust.....	3-5
Studebaker Bros. trust.....	5
Situation as to filing of Limited Partnership certificate	5-6
The new partnership statutes.....	6-7
Dividend situation	7-9
Original and intervening petitions.....	9
Tender and renunciation by Hecht and Finn..	9-10
Text of Section 11 of Uniform Limited Part- nership Act	10
Answers of Hecht and Finn to petitions.....	10
Amended petition	10-11
Answers to amended petition.....	11
Ruling of District Court.....	11
Decision of Circuit Court of Appeals.....	12
Additional defenses of these respondents not passed upon by Circuit Court of Appeals...	12-13
No ground for writ of certiorari.....	13-14
Brief	15-32
Questions in case depend on construction of documents	15
No dispute as to controlling facts.....	15
Jurisdiction conceded	15
No question requiring consideration of this court	15
Dissenting opinion no ground for certiorari...	16-17

Section 11 of Uniform Limited Partnership Act	17-23
Effect of tender and renunciation by Hecht and Finn as to other respondents.....	22-23
Limited partnership certificate contained no false statements	23-24
General Partnership Law of Illinois.....	24-29
Intention as test of partnership.....	26-29
Hecht & Finn Trust did not create a partnership	29-30
Contention as to subpartnership.....	30
The Studebakers	31
Conclusion	31-32

APPENDICES.

(Under separate cover.)

Appendix A—Explanatory note to the Uniform Limited Partnership Act.....	1-5
Appendix B—Article on the Uniform Limited Partnership Act, William Draper Lewis, 65 U. of Pa. Law Rev. 715.....	6-25
Appendix, Opinion, Crehan v. Megargel <i>et al.</i> 234 N. Y. 67	26-41

CASES CITED.

Bank v. Morris, 43 Legal Intelligence (Pa.) 56....	30
Burnett v. Snyder, 76 N. Y. 344.....	30
Burnett v. Snyder, 81 N. Y. 550.....	30
Bushnell v. Consolidated Ice Machinery Co. 138 Ill. 67	26
Bybee v. Hawkett, 12 Fed. 649.....	30
Clark, In re, 111 Fed. 893.....	27
Com. Natl. Bank of New Orleans v. Canal-Louisiana etc. 239 U. S. 520.....	21
Crehan v. Megargel (N. Y. Ct. of App. July, 1922), 234 N. Y. 67 (Appendices, pp. 26-41).....	24, 29
Crehan v. Megargel, 192 N. Y. S. 290.....	24, 29, 30
Crocker v. Malley, 249 U. S. 223.....	29
Dement, In re, 263 Fed. 813.....	16-17
Dolbear v. Gulf Production Co. 268 Fed. 737.....	16
Eikland, <i>et al.</i> v. Casey <i>et al.</i> 266 Fed. 821.....	16
Fougner v. First National Bank of Chicago, 141 Ill. 125	26
Francis v. McNeal, 228 U. S. 695.....	27
Garden City Parlor Furniture Co., In re—Rusnak v. Commerce Trust Co. 268 Fed. 318.....	16
Goacher v. Bates, 280 Ill. 372.....	26
Grinton v. Strong, 148 Ill. 587.....	26
Haines & Co.'s Estate, In re, 35 Atl. 237.....	26
Hendricks v. Webster, 159 Fed. 927.....	26
Home Lumber Company v. Hopkins, 190 Pac. 601..	29
Johnson v. Lewis, 6 Fed. 27.....	30
Jones v. Burnham, etc. 138 Fed. 986.....	27
Jones v. Gould, 209 N. Y. 419.....	30

Kaplan, In re, 234 Fed. 866.....	27
Kuhn Bros., In re, 234 Fed. 277.....	15
Lawrence v. Merrifield, 42 N. Y. Sup. Ct. 36.....	24
Lehigh Valley R. Co. v. John Lysaght, Limited, 271 Fed. 906	17
London Assurance Co. v. Drennan, 116 U. S. 464...	26
Mayfield v. Turner, 180 Ill. 332.....	26
Mayo v. Moritz, 155 Mass. 481; 24 N. E. 1083.....	29
Mente v. Eisner, Int. Rev. Coll. 266 Fed. 161.....	17
Meyer v. Krohn, 114 Ill. 574.....	30
National Surety Co. v. Townsend Brick, etc. Co. 176 Ill. 156	26
O'Connor v. Sherley, 107 Ky. 70; 52 S. W. 1056...	30
Phillips v. Phillips, 49 Ill. 437.....	26
Pinson & Co. <i>et al.</i> In re, 180 Fed. 787.....	27
Producers Coke Co. v. McKeefrey Iron Co. 267 Fed. 22	17
Reed v. Engel, 237 Ill. 628.....	26
Rhode Island Hospital Trust Co. v. Copeland, 98 Atl. 273	29
Rockafellow v. Miller, 107 N. Y. 507.....	30
Setzer v. Beale, 19 W. Va. 274.....	30
Standard Sewing Machine Co. v. Leslie, 78 Fed. 325	26
United States v. Levinson <i>et al.</i> 267 Fed. 692.....	16
Wells-Stone Mercantile Co. v. Grover, 75 N. W. 911	30
Wetzel <i>et al.</i> v. Empire Gas & Fuel Co. 264 Fed. 865	16
Williams v. Milton, 215 Mass. 1; 102 N. E. 355....	29
CITED BY PETITIONER.	
Buckley v. Bramhall (24 How. Prac. 456).....	24

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1921.

No. 443

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, JOHN JANCA, I. FIEGEL, FRED MAYER,
E. H. ALLEN, GEORGE B. GIFFORD AND HAROLD
LACHMAN,

Petitioners,

vs.

HENRY VETTE, PETER M. ZUNCKER, THEODORE
REGENSTEINER, CLEMENT STUDEBAKER, JR.,
GEORGE M. STUDEBAKER, FRANK A. HECHT AND
CLARA K. HECHT, EXECUTORS OF THE WILL OF FRANK
A. HECHT, AND JOSEPH M. FINN,

Respondents.

BRIEF OF RESPONDENTS VETTE, ZUNCKER, REGENSTEINER,
CLEMENT STUDEBAKER, JR., AND GEORGE M. STUDEBAKER,
IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO
THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

(Italics ours)

STATEMENT OF FACTS.

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The statement of facts set forth in the petition is not only incomplete, but erroneous and misleading in a number of important particulars. It contains a number of inaccuracies, hence we deem a brief statement necessary.

The respondents filing this brief are sometimes referred to as "these respondents."

On April 2, 1917, a limited partnership agreement was signed, under which, when effective, Ben Marcuse and Lew H. Morris were to be general partners and Henry Vette, Peter M. Zuncker, Theodore Regensteiner, Richard Yates Hoffman, Frank A. Hecht and Joseph M. Finn were to be limited partners. (Rec., 340, 413-477.)

Nine duplicate originals were signed and left in escrow with Colonel Foreman, of Foreman, Robertson & Blumrosen, attorneys for Vette and Zuncker. (Rec., 647, 697, 748.) These agreements *were not to be delivered or become effective*, until certain things had been done, as shown by a letter Colonel Foreman wrote to each of the signers of the documents to which they assented in writing. (Rec., 413, 477-487, 748, 749, 868.)

The then projected firm was to carry on a brokerage business. Marcuse afterward learned that a limited partnership with more than two limited partners would not be admitted to the New York Stock Exchange, and that the limited partners must not be in any other business. (Rec., 405, 406.)

The contemplated limited partnership would have had six limited partners, four of whom were actively engaged in other business. (Rec., 494, 557, 868, 911.) The limited partnership contemplated by the documents left in escrow *was thereupon abandoned* (Rec., 552, 574, 699, 764, 765, 793, 794, 869) and all of the parties were so notified by Marcuse. (Rec., 698, 699.) None of the signed documents held by Colonel Foreman were delivered, no certificate of partnership was filed, no money was paid in by anybody (Rec., 698, 743) and nothing further was done as to this uncompleted transaction. (Rec., 491, 698, 699, 794, 921, 928, 929.) Later Stein, attorney for Marcuse, Morris and Finn, and Robertson, one of the attorneys for Vette and Zuncker, formally

canceled all of the documents while still held in escrow by Colonel Foreman, by tearing off part of the signatures. (Rec., 848, 865-867.) The escrow conditions were not fulfilled prior to the abandonment of this partnership arrangement and the formal cancellation of the documents. (Rec., 685, 698.)

Later Marcuse and his attorney Stein sought to organize a limited partnership with only two limited partners. The Studebakers, through Buckingham their attorney, refused to contribute anything to the capital of this proposed firm or to be connected with it as limited or special partners. (Rec., 764-766, 869, 870.) Zuncker refused to have anything to do with it (Rec., 575) and Zuncker represented Vette also. (Rec., 758, 848.) Petitioners' assertion that none of the parties intended to abandon the originally contemplated limited partnership, but intended only to circumvent and evade the rules of the New York Stock Exchange is without foundation, and the District Court did not so find.

Marcuse and Stein induced Hecht and Finn to become limited partners in the new firm which was to be known as Marcuse & Co. (Rec., 410, 490, 491, 494, 701.) On June 30, 1917, Marcuse and Morris, as general partners, and Hecht and Finn, as limited or special partners, executed a limited partnership agreement. (Rec., 352-361.)

By this contract Hecht and Finn each agreed to contribute \$95,000 as limited partners to the capital of the firm. This \$190,000 was raised by the creation of what is known as the "Hecht-Finn Trust." (Rec., 367-374.) This Hecht-Finn Trust executed to Chicago Title & Trust Company as trust company, and bearing date June 30, 1917, after reference to the limited partnership agreement which had been entered into by *Marcuse, Morris, Hecht and Finn*, provided that Hecht and Finn, jointly

as trustees, should hold their interest in said co-partnership, as a trust fund, in accordance with said trust agreement. By its terms certificates were to be issued by Chicago Title & Trust Company, for such a number of shares, as at \$500 per share, would total \$190,000. Profits of the firm of Marcuse & Co. distributable to the two limited partners were to be paid to Chicago Title & Trust Company as trustee, AND WHEN (AND NOT BEFORE) SO SEGREGATED AND SEPARATED FROM THE ASSETS OF THE PARTNERSHIP OF MARCUSE & Co., WERE TO BECOME A PART OF THE HECHT-FINN TRUST FUND, and be distributed by the Chicago Title & Trust Company among the then holders of such trust certificates. Paragraph six of said trust agreement was as follows:

"The holders of trust certificates shall have no right, title, or interest, directory, proprietary or otherwise, in the said copartnership or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto, both legal and equitable, being vested in the trustees, nor shall the holders of trust certificates by the acceptance thereof be construed to have assumed any liability whatsoever with respect to said trust or said copartnership, but the interest of each and every holder of trust certificates shall consist solely of the right to receive his proportionate share of the net part or parts of the trust fund from time to time payable to the trust company hereunder, including the proportionate share of such holder of the corpus of said fund upon any dissolution of said copartnership, and such right shall be, and be taken to be, personal property and may be assigned and transferred as such subject to the limitations herein and in said trust certificates set forth and contained." (Sec. 6, Pet. Ex. 6, Rec., 372.)

Certificates were issued to Hecht for 50 shares, Finn 50 shares, Hoffman 100 shares, Regensteiner 57 shares, Vette 60 shares and Zuncker 50 shares. (Rec., 395-397, 498, 831, 835.) This trust agreement related to profits

of the limited partnership ONLY AFTER THEY HAD BEEN SEGREGATED FROM AND PAID OUT BY THE PARTNERSHIP, AND TO PROCEEDS OF LIQUIDATION ONLY AFTER SUCH LIQUIDATION, SO THAT BOTH CLASSES OF PROCEEDS COULD GO TO BENEFICIARIES UNDER THE HECHT-FINN TRUST ONLY AFTER SUCH FUNDS WERE NO LONGER PARTNERSHIP FUNDS. Vette, Zuncker Regensteiner and Hoffman each paid to Hecht and Finn, trustees under the Hecht-Finn Trust, the full amount (at \$500 per share) due for the shares issued to them. (Rec., 387-390, 506, 507, 687, 688, 875, 881.) Later Regensteiner divided his interest, surrendered his certificate and had new certificates issued for a portion of the shares to him and for the other shares to another as his transferee. (Rec., 830-834.)

Studebaker Bros. trust is an investment *fund* held under deed of trust by Chicago Title & Trust Co. trustee for the ultimate benefit of various persons including among others, Clement Studebaker, Jr., and George M. Studebaker. This trust was created long before the creation of Marcuse & Co. and without reference to that firm. The shares for which a certificate was issued to Hoffman, were purchased by Studebaker Bros. trust, and paid for by its check. (Rec., 390, 875.) The Hoffman certificate was by him assigned to and held by the trustee of Studebaker Bros. trust, as a part of the assets and investments of that trust. (Rec., 835-839.) Hecht and Finn endorsed the checks thus delivered to them and delivered the same, together with their own checks, to Marcuse & Co. (Rec., 386-392, 507.) In this manner Hecht and Finn procured the \$190,000 which they as limited partners contributed to the capital of Marcuse & Co.

On June 30, 1917, Marcuse, Morris, Hecht and Finn executed a certificate, under the Limited Partnership

Act then in force. (Rec., 364-366.) This was required to be filed with the county clerk of Cook County, Illinois. Mr. Sidney Stein (attorney for Marcuse), who prepared the limited partnership agreement and this certificate, undertook to file it. June 30th was on Saturday. (Rec., 502.) The county clerk's office closed before the certificate could be filed (Saturday afternoon being a half holiday), and, therefore, he did not file the certificate until the following Monday, July 2nd. (Rec., 364-366, 502.)

The certificate was in accordance with the provisions of the Limited Partnership Act in force in Illinois on June 30, 1917. In this certificate Hecht and Finn were named as limited partners and the amount of their contributions as \$95,000 each. (Rec., 365.) On Monday, July 2, 1917, the firm of Marcuse & Co. began business. (Rec., 535.)

Hecht and Finn were held out as limited partners on the firm stationery and on the firm business cards. (Rec., 734.) They were held out to the world as limited partners. No one considered them as anything else. They did not assume to be anything else. Vette, Zunker, Regensteiner, Hoffman and the two Studebakers did not appear in connection with the firm. No creditor of Marcuse & Co. traded with that firm, on account of the credit of any of these people, or had any knowledge of the source of the money which Hecht and Finn contributed to the capital of the firm.

The business continued until March 11, 1920, when a petition in bankruptcy was filed in the United States District Court at Chicago. (Rec., 43-46.)

On June 28, 1917, the Illinois legislature passed a new General Partnership Statute and a new Limited Partnership Statute, being the "Uniform Acts" originating

with the American Bar Association, and the committee on Uniform State Legislation. These acts became effective on July 1, 1917, which was Sunday. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a. Cahill's Ill. Rev. Stat. 1921, Ch. 106a, Smith's Ill. Rev. Stat. 1921, Ch. 106a.) Thus the old statute was in force on Saturday when the limited partnership contract, and the Hecht-Finn Trust Agreement were executed. If the limited partnership certificate had been filed with the clerk of the County Court that day the limited partnership would have become effective, but on the following Monday (July 2nd) when the certificate was filed, the old Limited Partnership Act had been superseded by the new Limited Partnership Act. By the terms of the old Illinois Limited Partnership Act, a limited partnership could be formed to carry on a brokerage business. A limited partnership would become effective when and if, and only when and if, the certificate thereof was filed with the county clerk. (Hurd's Rev. Stat. of Ill. 1915-1916, Ch. 84, Secs. 6, 8.) The new Limited Partnership Act, of 1917, which superseded the older one, over Sunday, did not provide for limited partnerships to carry on a brokerage business.

The dividends paid upon the limited partnership capital in the firm were paid to Chicago Title & Trust Company, trustee for that purpose, under the Hecht-Finn trust agreement, and were thus segregated from the assets of the firm and by that company distributed among the then certificate holders in accordance with the terms of the Hecht-Finn trust agreement (Rec., 371, 735-737) in every case but one. A four per cent dividend was declared in January, 1918. Vette and Zuncker were then customers of Marcuse & Co. and had trading accounts with that firm. Instead of paying the amount

of this dividend on the \$190,000 to Chicago Title & Trust Company (as Marcuse & Co. should have done), Marcuse apportioned this according to the amounts of the then outstanding certificates and credited the amount apportioned to the Zuncker certificate to Zuncker's trading account and the amount apportioned to the Vette certificate to Vette's trading account. (Rec., 436, 437.) There is nothing in the record to indicate that either Vette or Zuncker knew, at that time, that this had been done. Zuncker had no recollection of it. (Rec., 592, 593.) The amounts apportioned to the Finn certificate, the Regensteiner certificate and the Israel Grollman certificate were sent to each of them by the checks of Marcuse & Co. (Rec., 723, 725.) For the amount due on the certificate held by Studebaker Bros. Trust, Marcuse sent a check to Scott Brown, who is the manager of that trust. Brown refused to receive this check and returned it to Marcuse & Co. because the money should have been paid to Chicago Title & Trust Company as trustee under the Hecht-Finn Trust. (Rec., 736.) Marcuse then, instead of making out a check payable to Chicago Title & Trust Company, made out another check to Frank G. Gardner, an official of the Chicago Title & Trust Company. (Rec., 736.) He is the official to whom a trust certificate was issued upon a surrender and cancellation of the Hoffman certificate. (Rec., 837, 838.) This certificate Gardner endorsed in blank and turned over to Chicago Title & Trust Company, where it has since been held as a part of the securities belonging to Studebaker Bros. Trust. (Rec., 839.) Gardner endorsed this check and turned it over to Chicago Title & Trust Company and that company put it through the bank (Rec., 739), rather than returning it to Marcuse & Co. and insisting that another one be made out to Chicago Title & Trust Company. Marcuse, when

asked to explain why the attempt was made to handle this dividend in the manner as here explained, said that Hecht had suggested that it might save the expense of paying an extra commission to Chicago Title & Trust Company and said that Marcuse & Co. sent these checks out direct, but notified the Chicago Title & Trust Company that they had done so. (Rec., 736.) This was the only dividend he ever attempted to handle in that way. (Rec., 737.)

The original petition in bankruptcy was filed on March 11, 1920, against Marcuse, Morris, Hecht and Finn, as copartners doing business as Marcuse & Co. (Rec., 43.)

One Lachman filed an intervening petition against Marcuse, Morris, Hecht and Finn, in which he set forth the situation with reference to the new Limited Partnership Act's superseding the old act and that the certificate thereof had not been filed until after the new act became effective and claimed that Marcuse, Morris, Hecht and Finn were, therefore, all liable as general partners. But no reference was made to any one else. (Rec., 57.)

Neither Hecht nor Finn nor any of these respondents knew that the limited partnership certificate had not been filed until Monday, July 2, 1917, nor were they aware of the legal effect of that fact until the present litigation was started. (Rec., 407-409, 889-891.) Upon being advised of this claim by counsel Hecht and Finn promptly tendered to the bankruptcy receiver, \$46,000, being an amount larger than the profits which had been paid out to them by the partnership, with interest (Rec., 891, 892), together with a document of renunciation of all profits and benefits in compliance with Section 11 of the Uniform Limited Partnership Act of Illinois. (Rec.,

889, 891.) Later this money was paid to the clerk of the District Court. (Rec., 105.)

Section 11 of the Uniform Limited Partnership Act is as follows:

"A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income." (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 55. Smith's Ill. Rev. Stat. 1921, Ch. 106 $\frac{1}{2}$, Sec. 54, Cahill's Ill. Rev. Stat. 1921, Ch. 106a, Sec. 55.)

In the answer of Hecht and Finn to the original and intervening petitions (Rec., 84, 93, 106, 116, 127, 137) they set forth, among other things, in substance the provisions of Section 11 of the new Limited Partnership Act and the tender and renunciation, etc., which they had made upon learning of this situation, and that at no time had either of them participated in the management, control, operation or conduct of the business of said copartnership or taken any action in excess of action rightfully permitted to a limited partner in a limited partnership, etc.

On April 30, 1920, Fiegel, one of the original petitioning creditors, and Jacobs and Frazee, intervening petitioning creditors, filed an amended petition (Rec., 208) the parties defendant to which were:

- (a) Marcuse and Morris;
- (b) Hecht and Finn;
- (c) Vette, Zuncker, Regensteiner, Hoffman, Clement Studebaker, Jr., and George M. Studebaker.

This amended petition alleged merely that Marcuse, Morris, Finn, Hecht, Clement Studebaker, Jr., George M. Studebaker, Hoffman, Regensteiner, Vette and Zuncker, doing business under the trade name of Marcuse & Co. had their principal place of business in Chicago and were engaged in buying and selling stocks and other securities; that the petitioning creditors had provable claims against them, etc., and that each of them individually and as copartners were insolvent and had committed acts of bankruptcy and praying that they be individually and as copartners as Marcuse & Co. adjudged to be bankrupt.

Vette, Zuncker, Regensteiner, Hoffman, George M. Studebaker, and Clement Studebaker, Jr. (now for the first time brought into the case by petitioning creditors) filed their separate answers to the amended petition (Rec., 289, 297, 304, 310, 317, 323) setting forth the facts with reference to the organization of the firm, the Hecht-Finn Trust, the purchase of certificates, etc., and denying that they were members of the firm of Marcuse & Co. either limited or general or liable for the debts of that firm.

On this state of the record Landis, J., by an order entered July 1, 1920 (Rec., 333), found that the firm of Marcuse & Co. was composed of Ben Marcuse, Lew H. Morris, Joseph M. Finn, Frank A. Hecht, Clement Studebaker, Jr., George M. Studebaker, Theodore Regensteiner, Henry Vette, and Peter M. Zuncker and referred the cause to a referee for a hearing on the assets and liabilities up to March 11, 1920, when the original petition in bankruptcy was filed. Hoffman was not included in this order. The court thus held that all of these parties were general partners and directed an inquiry to determine whether the firm of Marcuse & Co. and all of these individuals as general partners was or was not insolvent.

DECISION OF CIRCUIT COURT OF APPEALS.

A petition to review and revise was filed to procure a review of this order and the Circuit Court of Appeals held originally and afterward on elaborate application for a rehearing:

(1) That Hecht and Finn in good faith believed themselves to be limited partners in a limited partnership.

(2) That this being the case their complete compliance with Section 11 of the new Uniform Limited Partnership Act exempted them from liability.

(3) That even if this were not so the Uniform General Partnership Act prevented their liability as general or any kind of partners.

(4) That Hecht and Finn not being liable as general partners, of course, the other respondents whose only relation was to Hecht and Finn could not be held either as general or limited partners or as any partners.

Having reached this conclusion the Court of Appeals found it unnecessary to pass on the further contentions set up by the other respondents. These undisposed of defenses of Vette, Zuncker, Regensteiner and the two Studebakers were:

(1) That these respondents were *cestuis qui trust* under the Hecht-Finn Trust Agreement and never became partners either general or limited.

(2) That even if Hecht and Finn were held to be general partners with Marcuse and Morris, yet these respondents, if partners at all, could be nothing more than subpartners of Hecht and Finn and that as such subpartners they would not be members of the firm of Marcuse & Co. and would not be liable to the creditors of that firm for its debts.

In addition to these defenses the Messrs. Studebaker contended that even if their preceding mentioned defenses were inadequate, they were not liable because they had not even purchased a trust certificate; that the money with which said certificate was purchased was the property of Studebaker Bros. Trust, a fund the legal title to which was in a trustee and that if the purchase from Hecht and Finn of a trust certificate operated to make the purchaser a general partner in Marcuse & Co. such purchaser was the trustee and the trust fund (which, operating through Scott Brown, its manager, had bought the certificate) and not the Studebakers as individuals.

None of these additional defenses of Vette, Zuncker, Regensteiner or the Studebakers became necessary to be passed on by the Court of Appeals.

NO GROUND FOR A WRIT OF CERTIORARI.

On this state of facts it will be apparent:

(a) That there is no public interest involved in this case. The language of the Uniform Act is plain and unequivocal. It offers no field for construction.

In addition to its plain language the *specific purpose and intent of Section 11* was so thoroughly elucidated by the committee which framed the act and procured its enactment in the law as to leave no possible room for doubt as to what the section means.

Furthermore, the facts in the instant case are so peculiar and unique that no decision in this case would ever affect any other litigant. It is hardly conceivable that another case like this will ever arise.

(b) The case does not involve a federal question in any sense. Neither a constitutional question nor the construction of a federal statute is involved.

(c) The fact that there was a dissenting opinion in the Court of Appeals is no basis for the allowance of a writ of certiorari.

(d) If there was "palpable error" (which there was not) in the construction given by the Court of Appeals to the uniform statutes that question will properly reach this tribunal when some other Court of Appeals makes a conflicting construction—a thing which on these peculiar facts most likely will never happen and this court may then, if it deems it proper, pass upon the questions in order to set at rest the conflict between the Circuit Courts of Appeal.

(e) The amount involved according to the record is large, but this is no ground for certiorari. If it were, this court would be so flooded with private litigation that it would not have time to properly consider and dispose of the class of cases really designed to be considered and passed upon by this court in the proper performance of its functions.

(f) No question of uniformity arises. There is no conflict between the Circuit Court of Appeals and any other Circuit Court of Appeals, or between the Circuit Court of Appeals and any state court.

BRIEF.

I.

The questions here involved depend wholly upon the construction of the limited partnership contract and the Hecht-Finn Trust Agreement executed June 30, 1917, and the proper application of the rules of law applicable thereto.

II.

There is no dispute as to any of the substantial and controlling facts and the question whether an order may stand in such a case is a review as to a matter of law within the provisions of Section 24b of the Bankruptcy Act, which may be passed upon by the Circuit Court of Appeals on a petition to review and revise.

In re Kuhn Bros. 234 Fed. 277.

The jurisdiction of the Circuit Court of Appeals was conceded by all parties.

III.

This case does not involve either a question arising under or calling for the application or construction of a provision of the federal Constitution or the construction of a federal statute, nor is there a conflict between Circuit Courts of Appeals. There is no question of public interest involved. The parties have had their day in two courts and this is not the kind of a case which should consume the time and receive the consideration of this court.

IV.

The fact that one of the judges of the Circuit Court of Appeals dissented is not a ground for certiorari. Certiorari has been repeatedly denied in cases where there was a dissenting opinion. A few of the most recent cases are (Vols. 254-256, U. S. Reports):

- In re Garden City Parlor Furniture Co.*—*Rusnak v. Commerce Trust Co.* (C. C. A. 7, Oct. 1920), 268 Fed. 318. (Bankruptcy Appeal, District Court affirmed and later reversed on rehearing by a divided court differently composed. Three judges wrote opinions contrary to that of the two judges whose opinion reversed the District Court.) Certiorari denied, 255 U. S. 568.
- Eikland et al. v. Casey et al.* (C. C. A. 9, 1920), 266 Fed. 821. (District Court reversed by divided court—two judges to two.) (Certiorari denied, 254 U. S. 652.
- Wetzel et al. v. Empire Gas & Fuel Co.* (C. C. A. 5, 1920), 264 Fed. 865. (Dist. Court reversed by a divided court—two judges to two.) Certiorari denied, 254 U. S. 635.
- Dolbear v. Gulf Production Co.* (C. C. A. 5, Aug. 1920), 268 Fed. 737. (District Court affirmed by divided court.) Certiorari denied, 255 U. S. 569.
- United States v. Levinson et al.* (C. C. A. 2, 1920), 267 Fed. 692. (District Court reversed by a divided court—two judges to two.) Certiorari denied, 254 U. S. 645.
- In re Dement* (Ct. of App. of D. C. 1920), 263 Fed. 813. (Patent Commissioner affirmed by

divided court.) Certiorari denied, 254 U. S. 630.

Mente v. Eisner, *Int. Rev. Coll.* (C. C. A. 2, 1920), 266 Fed. 161. (District Court affirmed by divided court.) Certiorari denied, 254 U. S. 635.

Producers Coke Co. v. McKeefrey Iron Co. (C. C. A. 3, 1920), 267 Fed. 22 (District Court affirmed by a divided court.) Certiorari denied, 254 U. S. 650.

Lehigh Valley R. Co. v. John Lysaght, Limited (C. C. A. 2, 1921), 271 Fed. 906 (District Court affirmed by divided court.) Certiorari denied, 256 U. S. 704.

Touching briefly on the principal contentions we contend that:

SECTION 11 OF THE UNIFORM LIMITED PARTNERSHIP ACT.

(a)

The construction given by the Circuit Court of Appeals, to the Uniform Limited Partnership Act, was not erroneous. For many years, there had been on the statute books of Illinois a Limited Partnership Law. It was in effect on Saturday, June 30, 1917. Under that law, Marcuse and Morris, and Hecht and Finn, attempted to form a limited partnership. They drew articles, in all respects in conformity therewith. If the limited partnership certificate had been filed on Saturday, June 30th, with the county clerk, the attempted limited partnership would have been an accomplished fact. In that event, Hecht and Finn beyond all question would have accomplished limited liability.

The Illinois statute, however, provided, that the lim-

ited partnership should become effective *when* the articles were filed with the county clerk. The attorney for Marcuse, who undertook to attend to the filing, was too late, on Saturday, and therefore filed the instrument on Monday morning, July 2nd.

In the meantime, on Sunday, July 1st, a new Limited Partnership Act went into effect, expressly repealing the old one. (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a; Smith's Ill. Rev. Stat. 1921, Ch. 106½; Cahill's Ill. Rev. Stat. 1921, Ch. 106a.)

The nonfiling of the certificate, and also the passage of the new act, was unknown to any of these respondents until after the bankruptcy suit brought it to their attention.

The new limited partnership statute, which was in effect on July 2nd, and subsequently, contained Section 11, which is set forth in full herein at p. 10.

Hecht and Finn *believed* themselves to be limited partners in a limited partnership. Of this there can be no doubt. As soon as they learned that (by reason of the nonfiling of their certificate on Saturday) it was claimed that they were not limited partners and that their belief might be erroneous, they immediately tendered to the receiver in bankruptcy \$46,000 in money, being an amount greater than they had received from the partnership with interest thereon. This they did on the advice of counsel under the provisions of said Section 11.

The language of Section 11 is plain and unequivocal. It bases relief not upon mistake of law or mistake of fact, but upon the *belief* of the interested party. It is a broad remedial provision. Its purpose is to afford relief to persons caught in just such a technical trap, as that which closed on Hecht and Finn. However, the

Court of Appeals, plain as is the statute, had still further light upon its purpose.

The present Illinois limited partnership statute is one of a series of uniform statutes recommended for adoption by the American Bar Association. It was prepared by a committee of the National Conference on Uniform State Laws. When it was submitted to the Illinois legislature there was submitted therewith an explanatory note setting forth the object and purpose of the proposed act. This practice has been followed in submitting all of the uniform statutes. This explanatory note was signed by Professor William Draper Lewis, Dean of the College of Law of the University of Pennsylvania, who was the draftsman for the committee. Its text is set forth as Appendix A hereto. (Appendices, pp. 1-5.)

The essence of the report is that the existing partnership acts of various states, as they have come to be interpreted by the courts, are so *drastic* as to make almost useless the entity known as the limited partnership. The reason set forth is that *strict compliance* is always necessary to effectuate the limitation of liability of the limited partner, and that failure to file articles, and other similar technical defects, are generally held to make the limited partner liable as a general partner. The report sets forth that this is a state of affairs which is unreasonable, not required by justice or public policy, and should be remedied; and that where persons have contributed as limited partners to the capital of the limited partnership, *in good faith*, they should not be held liable as general partners, but should be protected from that liability, and that this statute is designed to remedy that wrong. With respect to Section 11, the report says:

“The limited partner, not being in any sense a principal in the business, failure to comply with the

requirements of the Act in respect to the certificate, while it may result in the nonformation of the association, *does not make him a partner, or liable as such.* The exact nature of his liability in such cases is set forth in Section 11." (Appendix A,* p. 4.)

The National Conference, when it approved the limited partnership statute, also approved the report of the committee which drafted it, which contained the following:

"The committee is of the opinion that the act, as drafted, preserves all the commercial advantages of the present Limited Partnership Acts and does away with the very serious disadvantages which arise from regarding a person who has contributed to the capital of the partnership as a partner, to be held unlimitedly liable for all partnership debts, unless he has strictly complied with the requirements of the statute." (Proceedings of 26th Ann. Meeting, Nat. Conf. of Commrs. on Uniform State Laws, 1916, p. 226.)

Professor Lewis, who drafted the act, published a commentary (65 U. of Pa. Law Rev. p. 715) which appears as "Appendix B"* to this brief. (Appendices, pp. 6-25.) In this elaborate report it was pointed out that the evil of the existing statutes was chiefly that one who had, in good faith, attempted to limit his liability, but who had technically failed to do so, was held as a general partner, and that Section 11 had been specifically written into the new statute for the express purpose of remedying that evil, and bringing about a new condition where such drastic and inequitable results would not be possible.

Section 11 covers attempts—and under any act—not those which have succeeded, but those which have failed. Section 11 protects a person who erroneously believes what is not the fact, *i. e.*, that he is a limited partner in a limited partnership. It was not (as apparently con-

*Certain materials which might not otherwise be readily available to the court are reprinted and filed herewith under separate cover as appendices to this brief, being Appendix A, Appendix B and Appendix C.

tended) incorporated into the act for the benefit of persons who are actually members of a limited partnership organized under the act, *i. e.*, those who have complied with the provisions thereof. They *are* limited partners and are liable only as such. If this contention were correct, Section 11 would be meaningless and superfluous. As pointed out by the Circuit Court of Appeals, ample provision has been made in other portions of the act for the correction of errors in organization or for amendments. (Rec., 1012, 1013.)

The purpose of this act was to declare a new public policy and was the deliberate adoption by the State of Illinois of a *new and basic* principle.

This court has already laid down salutary principles for the construction of the Uniform Acts, which were expressly followed by the Circuit Court of Appeals. (Rec., 1018.) These principles need no reaffirmance.

The case of *Commercial National Bank of New Orleans v. Canal-Louisiana Bank & Trust Company*, 239 U. S. 520, 526, 528-529, seems to have settled the law that in construing these Uniform Acts:

(1) The real purpose if ascertainable, supersedes and repeals existing local statutes and court decisions, if in conflict with that real purpose.

(2) That in ascertaining such real purpose the explanatory report of those who drafted the statute is to have great, if not controlling, weight.

Tested by these rules, Hecht and Finn were not general partners. *They believed, in good faith*, that they were limited partners in a limited partnership. As soon as they ascertained the possible error of that belief they immediately complied with Section 11 of the existing law, and thereby became discharged from being held as general partners. The Circuit Court of Appeals, therefore, both on the plain text of the act, and also upon the re-

vealed purpose of the new statute, could not have found otherwise than they did.

Hecht and Finn, if held as general partners, would have been so held because of a purely technical error. The operation of the old statutes was harsh and inequitable. The main purpose of the new statute was to relieve against such injustice and hardship. No other construction of Section 11 is possible.

There is nothing in present Illinois act which deprives a person who honestly believes himself to be limited partner of the benefits of Section 11 because his firm engages in the brokerage business. The policy to be pursued in regulating brokerage firms is not in issue. Counsel's suggestions in this connection are wholly immaterial.

Hecht and Finn were trustees under the Hecht-Finn trust agreement. They also occupied the dual position of being certificate holders under the Hecht-Finn trust agreement and limited partners under the limited partnership contract, but they were limited partners not because they were certificate holders, but because as individuals distinguished from certificate holders they made themselves limited partners in Marcuse & Co. They could have ceased to be certificate holders by transferring their certificates, but by doing so they would not have ceased to be limited partners.

True it is, that the certificate holders other than Hecht and Finn were neither general nor limited partners. They denied and here deny that they were anything other than certificate holders or *cestuis que trust* under the Hecht-Finn trust agreement, but the effort is to hold them to the liability of partners upon the ground that Hecht and Finn represented them in this firm. Hence, if Hecht and Finn were not liable as general partners those whom they represented could not be liable as general

partners, and, therefore, in so far as Section 11 is concerned, Vette, Zuncker, Regensteiner and the two Studebakers were entitled to the benefit of the tender and renunciation made by Hecht and Finn regardless of whether they joined in the tender or requested, directed or authorized it to be made on their behalf. The Circuit Court of Appeals has well said that,

“Their connection with the partnership being thus traced through their representation by Hecht and Finn, it follows that if such representation would operate to charge them, they should in good conscience also have the benefit of whatever Hecht and Finn may have done which would bring relief from the charge.” (Rec., 1014.)

These respondents have not, as asserted by petitioners, “disclaimed any necessity of returning profits.” (Petition, p. 16.) What they did do was to indicate to Hecht and Finn that they would have to assume the responsibility of deciding whether they, as trustees, should make the tender and renunciation and how and in whose behalf it should be made. (Rec., 895-900.) Hecht and Finn made the tender and renunciation and paid \$46,000 into court, “acting on behalf of themselves and each acting for himself individually, and also acting as trustees,” and on behalf of all the beneficiaries under the Hecht-Finn trust (Rec., 890, 891), which, of course, was the thing for them to do.

LIMITED PARTNERSHIP CERTIFICATE CONTAINED NO FALSE STATEMENT.

Petitioners' contention that the limited partnership certificate filed was false in that it did not set forth the names of these respondents or any statement of a contribution by them, is completely and effectively disposed of by the following recent decisions, as is also (spe-

cifically) the case of *Buckley v. Bramhall* (24 How. Prac. 456), relied on by petitioners.

Crehan v. Megargel (N. Y. Ct. of App. July 12, 1922. See opinion, pp. 26, 31-34, Appendix C hereto, 234 N. Y. 67, 76-80.

Crehan v. Megargel (N. Y. Sup. Ct. App. Div. 1922), 192 N. Y. S. 290, 297, 298.

See also *Lawrence v. Merrifield*, 42 N. Y. Sup. Ct. 36, affirmed 73 N. Y. 590.

Each of these cases involved the construction of a statute similar to the old Illinois Limited Partnership Act, the material provisions being precisely the same. In each, as in the opinion of the Circuit Court of Appeals, it was pointed out that it is "a matter of absolute indifference to the creditors in what manner the special partner received his money so long as it was paid into the capital of the firm."

GENERAL PARTNERSHIP LAW OF ILLINOIS.

On July 1, 1917, there also went into effect, in Illinois, the Uniform General Partnership Law. This was enacted under exactly the same circumstances. Among its provisions is one which provides that persons are partners, as to creditors, *only* if they are partners as between themselves. In Illinois, the law is and always has been that as between the partners, "partnership" is a question of intention. This statute was in effect during the entire time Marcuse and Company operated. The trust test under this law was well stated by the Circuit Court of Appeals, viz.:

"The existence of a partnership between themselves may be tested by the query whether in case

of loss of the entire capital of the concern, and payment by Marcuse and Morris of its debts, they might have contributions from petitioners as in a partnership. Undoubtedly under the contractual relation here shown they could not." (Rec., 1017.)

If Marcuse had fallen heir to sufficient money to pay off the creditors of Marcuse & Co., could he maintain suit against Vette, Zuncker, Regensteiner, Clement Studebaker, Jr., or George M. Studebaker, to contribute to pay the partnership debts? Partners are liable to each other in contribution when one pays the partnership debt. This is universally true if they *are partners*. It is obvious that under these partnership articles Hecht and Finn were not the partners of Marcuse and that much less were Vette and the others partners of Marcuse.

Section 7 of the new Uniform General Partnership Act provides that except as provided by Section 16 of that act, persons who are not partners to each other are not partners as to third persons (Hurd's Rev. Stat. of Ill. 1921, Ch. 106a, Sec. 7), and Section 16 has no application to this case.

There never was any intention on the part of Hecht and Finn to become anything other than limited partners. There never was any intention on the part of any of the other respondents to become either general or limited partners. The only men who intended to become general partners in Marcuse & Co. were Marcuse and Morris. Under the law as it existed prior to the adoption of the Uniform Partnership Act in Illinois, the existence of a general partnership as between alleged partners was a question wholly of their intention to be gathered from their agreement and where there was a written and signed agreement on the subject the

partnership question must be determined from the language of the contract itself.

Fougner v. First National Bank of Chicago, 141 Ill. 125, 128.

Grinton v. Strong, 148 Ill. 587, 596.

Mayfield v. Turner, 180 Ill. 332, 336.

Hendricks v. Webster (C. C. A. 8), 159 Fed. 927, 929.

In re Haines & Co.'s Estate, 176 Pa. 354; 35 Atl. 237, 239.

Standard Sewing Machine Co. v. Leslie (C. C. A. 7), 78 Fed. 325, 328.

Goacher v. Bates, 280 Ill. 372, 376.

National Surety Co. v. Townsend Brick, etc. Co. 176 Ill. 156.

As to the matter of intention, etc., see

Ruling Case Law, Vol. 20, p. 831.

Phillips v. Phillips, 49 Ill. 437, 439.

Bushnell v. Consolidated Ice Machinery Co. 138 Ill. 67, 74, 75.

Grinton v. Strong, *supra*, p. 596.

Reed v. Engel, 237 Ill. 628, 631.

Goacher v. Bates, 280 Ill. 372, 376.

London Assurance Co. v. Drennan, 116 U. S. 461, 472.

Respondents never intended to become general partners with Marcuse and Morris, nor with each other. Vette, Zuncker, Regensteiner and the Studebakers never intended to become partners of any kind. There was no intention among all these people to become partners, hence they were not partners as to each other, and, therefore, under said Section 7 were not partners as to third persons. This is the plain mandate of the statute.

There being no actual partnership between any of the parties except the limited partnership with Marcuse and Morris as general partners and Hecht and Finn as limited partners, there can be no liability for the debts of the firm so far as respondents are concerned, because even if there was any ground in the record for the application of the doctrine of partnership by estoppel (which there is not), such a doctrine has no place in a bankruptcy proceeding.

In re Kaplan (C. C. A. 7), 234 Fed. 866.

In re Pinson & Co. et al. (Dist. Ct. Ala.), 180 Fed. 787, 789.

Jones v. Burnham, etc. (C. C. A. 3), 138 Fed. 986.

In re Clark (Dist. Ct. Wash.), 111 Fed. 893, 894.

Collier on Bankruptcy (11th Ed. 1917), p. 167.

The question as to whether or not one is a partner is to be decided by the rules of law relating to partnership unaffected by the Bankruptcy Act exactly as in any other court.

Francis v. McNeal, 228 U. S. 695, 700.

Collier on Bankruptcy (11th Ed. 1917), p. 167.

(c)

Section 6 (1) of the Uniform General Partnership Act adopted in 1917 provides that "A partnership is an association of two or more persons to carry on as co-owners a business for profit." (Hurd's Rev. St. of Ill. 1921, Ch. 106a, Sec. 6.)

The court will observe that the association must be for the purpose of and with the *intention* to

- (a) carry on
- (b) as co-owners
- (c) a business for profit.

But,

(1) The certificate holders under the Hecht-Finn trust agreement did not form an association. They formed a trust modeled along the lines of a so-called "Massachusetts Trust." Authorities upon this point are cited under point (d) of this brief.

(2) Neither the certificate holders under the Hecht-Finn trust agreement nor Hecht and Finn nor any of them, formed an association with Marcuse and Morris "to carry on" this business. Section 6 relates to a general partnership. The words "to carry on" clearly contemplate an association in which each member is to participate in the carrying on, *i. e.*, managing and conducting the business. Limited partners do not carry on or manage, conduct or control a business. These things are done by the general partners. One who enters into or assists in forming an association to be composed of both general and limited partners, in which he is to be only a limited partner and have nothing to do with the management, conduct or control of the business, does not go into an association "to carry on" the business, for the business is to be carried on not by him or by him in conjunction with others, but by the general partners. Indeed, a limited partner must refrain from taking part in the management, conduct or control of the business for otherwise he might expose himself to the liability of a general partner and no one but Marcuse and Morris had any such intention.

(3) The certificate holders under the Hecht-Finn trust agreement were not co-owners. George M. Studebaker and Clement Studebaker, Jr., were not co-owners. The latter were not even certificate holders.

Section 6 of the Hecht-Finn trust agreement in lan-

guage as plain as could be used excludes the idea of the certificate holders being co-owners.

We quote:

"The holders of trust certificates shall have no right, title or interest directory, proprietary or otherwise in said copartnership or in or to the property or assets of said copartnership, the entire right, title and interest therein and thereto both legal and equitable being vested in the trustees," etc. (Pet. Ex. 6, Rec. 372.)

HECHT-FINN TRUST DID NOT CREATE A PARTNERSHIP.

(d)

The Hecht-Finn trust agreement did not create a partnership either by its own terms or when read in connection with the limited partnership agreement between Marcuse, Morris, Hecht and Finn. The certificate holders as such were not partners either as between themselves or with Marcuse and Morris, but their relationship was with Hecht and Finn and was that of *cestuis que trust*.

Williams v. Milton, 215 Mass. 1, 10, 11; 102 N. E. 355, 358, 359.

Crocker v. Malley, 249 U. S. 223, 232, 233.

Mayo v. Moritz, 151 Mass. 481; 24 N. E. 1083.

Crehan v. Megargel (Jan. 20, 1922) 192 N. Y. S. 290.

Crehan v. Megargel (N. Y. Ct. of App. July 12, 1922), 234 N. Y. 67. (See Opinion, Appendix C, pp. 26-41.)

Crehan v. Megargel et al. 192 N. Y. S. 290.

Home Lumber Company v. Hopkins, 190 Pac. (Kan.) 601, 604.

Rhode Island Hospital Trust Co. v. Copeland, 98 Atl. (R. I.) 273, 279.

Johnson v. Lewis (C. C. Ark.), 6 Fed. 27, 28.
Wells-Stone Mercantile Co. v. Grover, 75 N. W.
 (N. D.) 911, 916.
Jones v. Gould, 209 N. Y. 419, 424.

RESPONDENTS' CONTENTION AS TO SUBPARTNERSHIP.

(e)

If the Hecht-Finn trust agreement created a partnership between Hecht and Finn and the other certificate holders thereunder it was a SUBPARTNERSHIP. Such certificate holders were not members of Marcuse & Co. and not liable as such.

Mechem's Elements of Partnership, 2nd Ed.
 1920, p. 52.

Bates' Law of Partnerships, Vol. 1, pp. 168-170.
Parson on Partnership, p. 33.

Cyclopedia of Law & Procedure, Vol. 30, pp.
 381, 382, 396.

Ruling Case Law, Vol. 20, pp. 1073, 1074.

Burnett v. Snyder, 76 N. Y. 344.

Burnett v. Snyder, 81 N. Y. 550.

Bybee v. Hawkett (C. C. A. 6), 12 Fed. 649.

Bank v. Morris, 43 Legal Intelligence (Pa.) 56.

Rockafellow v. Miller, 107 N. Y. 507.

O'Connor v. Sherley, 107 Ky. 70; 52 S. W. 1056.

Setzer v. Beale, 19 W. Va. 274, 287, 288.

Meyer v. Krohn, 114 Ill. 574, 581.

Crehan v. Megargel (N. Y. Sup. Ct., App. Div.
 1922), 192 N. Y. S. 290, 299.

THE STUDEBAKERS.

(f)

Clement Studebaker, Jr., and George M. Studebaker were not even certificate holders. Studebaker Bros. Trust was created by a document, copy of which is in evidence. (Rec., 795.)

It is an investment fund held under this trust instrument by a trustee for the ultimate benefit of various persons including, among others, Clement Studebaker, Jr., and George M. Studebaker. The money with which the certificate was purchased indisputably was that of Studebaker Bros. Trust. The purchase price was paid by its check. The legal title to the purchase money was in the trustee and as explained hereinabove the certificate issued for this money to Hoffman was thereafter surrendered and a new certificate issued to Gardner, one of the officials of this trustee, and that certificate was by him assigned and turned over to the trustee and held as a part of the assets of Studebaker Bros. Trust. (Rec., 835-839.)

On no possible theory of law could the two Studebakers be held to be partners either general or limited in the firm of Marcuse & Co.

CONCLUSION.

Last it is submitted, that there is no proper end of justice to be subserved by reopening this case.

The respondents, Hecht and Finn, supposed themselves to be special and limited partners.

The public supposed them so to be.

The creditors traded with the firm on that supposition.

The traders were not relying on any general liability, or personal credit, of Hecht and Finn.

The creditors never even heard of the other respondents—much less extended credit to the firm because of them.

All the respondents, including Hecht and Finn, are *heavy losers*—they suffered more from the firm's failure than did any of the creditors.

The ground on which Hecht and Finn and these respondents were sought to be held, has no basis in equity or substantial justice—it is based solely on an error of one day in filing—a highly technic ground which injured no one.

The petition for certiorari should be denied.

Respectfully submitted,

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Studebaker.*

SEP 28 1921

WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1921.

No.  59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, ET AL.,
Petitioners,
vs.

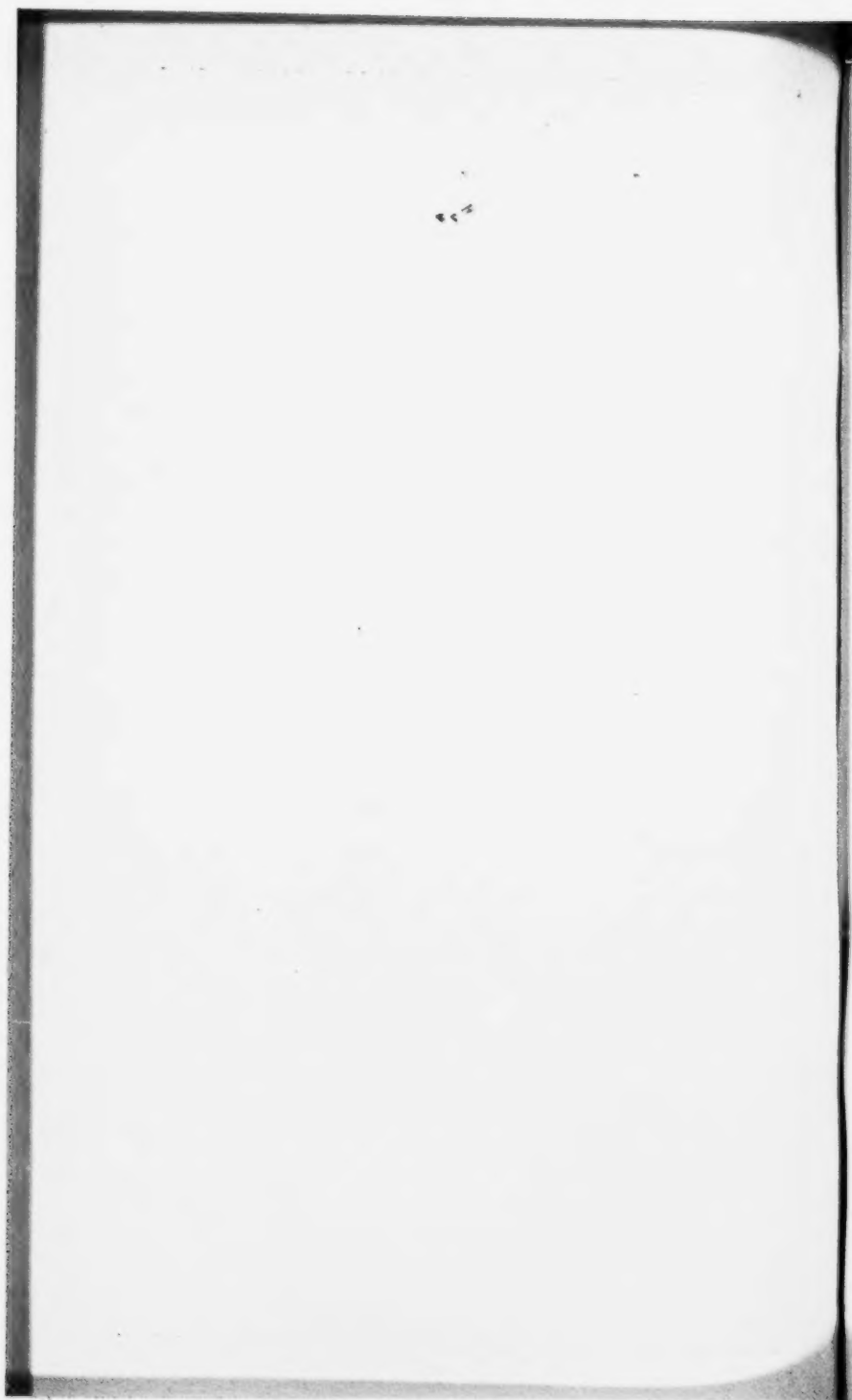
HENRY VETTE, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT.

BRIEF OF RESPONDENTS, FRANK A. HECHT, JR., AND CLARA K.
HECHT, AS EXECUTORS OF THE WILL OF FRANK A. HECHT,
DECEASED, AND OF JOSEPH M. FINN, IN OPPOSITION TO PETI-
TION FOR WRIT OF CERTIORARI.

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INDEX

	Page
Decision of Court of Appeals Correct.....	7
Explanatory Note of Uniform Limited Partnership Act	15
Federal Question Not Involved.....	7-13
Fraud Not Involved	26
National Conference Commissioners Uniform State Laws	19
New Public Policy Created by Act July 1, 1917....	20
No Ground for Certiorari Shown.....	7-13
Renunciation Relieved All Respondents.....	30
Respondents Not General Partners Irrespective of Section 11	27
Section 11 Limited Partnership Act Construed....	13-20
Section 4, Ch. 131, Rev. Stat. Illinois.....	23
Statement of Facts	1-6
Uniform Partnership Act of Illinois.....	21

TABLE OF CASES.

Commercial National Bank of New Orleans v. Canal-La. Bank & Trust Co. 239 U. S. 520.....	20
Fairfield v. County of Gallatin, 100 U. S. 47.....	12
Fields v. U. S. 205 U. S. 292, 296.....	8
Forsyth v. Hammond, 165 U. S. 506, 514.....	8
Green v. Neal's Lessee, 6 Peters, 291.....	12
May v. Tenney, 148 U. S. 60, 64.....	11
Philippine Sugar Estates Development Co. v. Government of Philippine Islands, 247 U. S. 385, 389.	16
Shelby v. Guy, 11 Wheat. 361, 367.....	11
Wade v. Travis County, 174 U. S. 499, 508.....	12
Williams v. Eggleston, 170 U. S. 304, 311.....	13



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1921.

No. **443**

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, ET AL.,
Petitioners,
vs.

HENRY VETTE, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT.

BRIEF OF RESPONDENTS, FRANK A. HECHT, JR., AND CLARA K.
HECHT, AS EXECUTORS OF THE WILL OF FRANK A. HECHT,
DECEASED, AND OF JOSEPH M. FINN, IN OPPOSITION TO PETI-
TION FOR WRIT OF CERTIORARI.

STATEMENT OF FACTS.

We cannot accept the statement of facts submitted by petitioners. We will briefly detail the relevant proven facts.

Ben Marcuse, who had been an employee of a former brokerage concern in the City of Chicago, executed on April 2, 1917, a limited partnership agreement between

himself and Lew H. Morris as general partners, and the other respondents as limited partners. (Rec., 340, 413.) This special partnership agreement was signed and nine duplicate originals were left in escrow and were not to be delivered or become effective until certain court proceedings involving the former brokerage concern were dismissed and certain arrangements made with the executors of the estate which owned it. (Rec., 478.)

Between the date of the execution of this special partnership agreement and the carrying into effect of the foregoing details, the New York Stock Exchange advised Marcuse that no limited partnership with more than two limited partners would be admitted to the exchange. (Rec., 405.) It was also required that the limited partners must not be engaged in any other business. The proposed limited partnership as outlined in the contract of April 2nd could not, therefore, be carried out and the documents left in escrow evidencing the agreement were never delivered.

Thereafter Marcuse and his counsel sought to organize a limited partnership with only two limited partners, and induced respondents Hecht and Finn to become limited partners in the new firm of Marcuse & Company. (Rec., 490-492.) On June 30, 1917, an agreement was made whereby the firm of Marcuse & Company was organized with Marcuse and Morris as general partners and Hecht and Finn as limited partners, representing themselves and all of the other respondents to this petition, Vette, Zuncker, Regensteiner and the Studebakers (the latter through the Studebaker Trust, controlled by them). All contributed the same amounts of money which they had agreed to contribute under the limited partnership agreement of April 2, 1917. The Hecht-Finn trust agreement was executed, whereby all of the

respondents appointed the Chicago Title and Trust Company as trustee to receive all of the profits. The special partners, Hecht and Finn, also executed the agreement as trustees. The trust company was to issue certificates to each of the parties who had contributed the funds for the special partners, such certificates to be given to each contributor in proportion to his contribution.

Certificates were issued to Hecht and Finn for 50 and 63 shares, respectively, to one Hoffman, representing the Studebakers, for 100 shares; to Regensteiner, 57 shares; to Vette, 60 shares, and to Zuncker, 50 shares. (Rec., 370, 395, 498.) The total amount paid in by the respondents was \$190,000, contributed in proportion as the certificates were issued.

This was on Saturday, June 30, 1917. Marcuse, Morris, Hecht and Finn executed a certificate required under the Limited Partnership Act then in force in Illinois. This was to be filed with the county clerk. Saturday afternoon was a legal holiday in Illinois and the county clerk's office was closed at noon so the certificate could not be filed until the following Monday, July 2nd. (Rec., 364.)

This certificate complied with the provisions of the existing Limited Partnership Act on June 30, 1917. Marcuse and Morris were named as general partners and Hecht and Finn as limited partners. (Rec., 361.) On Monday, July 2, 1917, the first business day following, the certificate was filed and the firm of Marcuse & Company began business. (Rec., 535.) Hecht and Finn were never held out as anything but limited partners. They were so designated on the firm's stationery and business cards. (Rec., 732-734.) No creditor ever claimed to have dealt with the firm upon the theory that Hecht

and Finn were other than limited partners. They took no part in the business and did not assume to be other than limited partners. No claim was ever made by any creditor that he traded with the firm upon the belief that Hecht and Finn were general partners. The business continued until the petition in bankruptcy was filed, practically three years later (March 11, 1920). (Rec., 43-46.)

On June 28, 1917, two days before the execution of the limited partnership agreement, there was passed by the Illinois Legislature a new general partnership statute and a new limited partnership statute, being the Uniform Acts recommended by the American Bar Association. These acts became effective on July 1, 1917, which was Sunday. Thus the old statute was in force on Saturday when the limited partnership contract and the Hecht-Finn trust agreement were executed, and if the certificate had been filed with the county clerk on Saturday, there would have been no question of its full compliance with the statute. It was not until the filing of the petition in bankruptcy that any of the respondents knew or had had suggested to them in any way, that they were possibly liable as general rather than as limited partners. (Rec., 407-409, 889-891.)

All of the respondents believed that the limited partnership certificate had been properly filed.

Section 11 of the Uniform Limited Partnership Act of July 1, 1917, provides as follows:

"A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided

that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income." (Hurd's Revised Statutes 1917, Chapt. 106a, sec. 55.)

When, therefore, after the filing of the petition in bankruptcy the assertion of the claim that they were liable as general partners was first made, Hecht and Finn promptly renounced their interest in the profits of the business by way of income and tendered and paid to the court \$46,000, being all the profits which they and all the other respondents had received from the partnership with interest thereon. (Rec., 891, 892.)

On the hearing before Judge Landis he held (Rec., 333) that the firm of Marcuse & Company was composed of all of the respondents by reason of the failure to file the limited partnership agreement on Saturday instead of Monday morning, as was done, and referred the matter to the referee to determine the question of solvency of these respondents as general partners.

From this finding a petition to review and revise was filed in the Circuit Court of Appeals for the Seventh Circuit and that court, after elaborate arguments, held in substance as follows:

1. That Hecht and Finn in good faith believed themselves to be limited partners in a limited partnership.
2. That having such belief their prompt renunciation and payment of their profits into court relieved them from liability by reason of Section 11 above quoted.
3. That in addition, even if this were not true, the Uniform General Partnership Act prevented them from becoming liable as general partners.
4. That Hecht and Finn not being liable as general partners and having tendered all of the profits, not only

of themselves but of all the other respondents into court, the other respondents were likewise relieved from liability.

From the foregoing it is clear that:

(1) The case involves no federal question by any possible reasoning. The very reason which actuated the American Bar Association to bring about the enactment of the statutes in question was that these uniform laws cover matters entirely outside of federal laws and are exclusively matters of state statutes. For if they involved a federal matter, the desired uniformity could be secured by congressional legislation.

(2) The decision of the Court of Appeals is correct.

(3) The fact that there was a dissenting opinion in the Court of Appeals does not in anywise form the basis for the allowance of the writ.

(4) The fact that the amount involved in the bankruptcy case was large furnishes no ground for certiorari. If the contrary were true, this court would be engaged in hearing nothing but certiorari because most federal cases involve large sums of money.

(5) Nor does the fact that the litigation arose in a bankruptcy proceeding make the question a federal one. The rights of creditors and debtors under these partnership laws depend upon state statutes and the bankruptcy courts enforce these rights according to the varying state laws which govern them.

I.

THE DECISION OF THE COURT OF APPEALS IS SOUND. EVEN IF IT WERE NOT, THE RECORD PRESENTS NO QUESTION CALLING FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

The decision of the Court of Appeals is sound, as hereafter argued. But, aside from that, this case presents no question of general importance sufficient to warrant the issuance of the writ here sought, nor is there involved any question of lack of uniformity of decision. No claim is made by petitioners that it does. There is no decision by any Circuit Court of Appeals or any state court contrary to the decision here sought to be reviewed. There is not, therefore, any question of conflict of decisions. The sole basis for the petition is that petitioners disagree with the decision of the Circuit Court of Appeals and, as they state (Petition, p. 22), they desire in "the public interest" which, obviously, is nothing but petitioners' own interest, "an authoritative ruling on these most important uniform acts—a ruling that will inspire confidence and preserve the uniformity aimed at." In other words, petitioners do not ask this court to decide as between conflicting decisions, but desire this court *to make an original decision as a guide to the state courts hereafter*. Such a ruling would be persuasive but neither controlling nor within the meaning of the act authorizing *certiorari*, and the uniform practice of this court thereunder.

None of the other reasons assigned in support of the petition, the asserted "palpable error in the decision of the Circuit Court of Appeals" and the amount involved, brings the case within those questions which must be involved to warrant the issuance of the writ.

The rule is well stated in *Forsyth v. Hammond*, 165 U. S. 506, 514:

"It is a power which will be sparingly exercised, and only when circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal or between courts of appeal and the courts of a state, or some matter affecting the interests of this nation in its internal or external relations demands such exercise."

The argument that the amount involved justifies the issuance of the writ is answered by this court in the following:

"However important the case may be to the applicant, the question involved is not one of gravity and general importance. There is no conflict between the decision of state and federal courts or between those of federal courts of different circuits. There is nothing affecting the relations of this nation to foreign nations, and indeed no matter of general interest to the public."

Fields v. U. S. 205 U. S. 292, 296.

If this court should take this case it would be called upon to decide matters applicable solely to the State of Illinois. The very reason for the action of the American Bar Association in securing uniform state laws is that the matter lies outside of federal law and is exclusively a question of state statute.

Notwithstanding the position of petitioners, the decision complained of is the proper decision under the facts involved in this particular case, and any future cases, under similar facts will, we are confident, be followed by both state and federal courts in construing the acts of the Legislature of Illinois, which are involved herein.

The whole case of petitioners hinged upon the effect attributed by Judge Landis to a purely accidental circum-

stance. Under the Limited Partnership Act of Illinois, in force prior to July 1, 1917, it was permissible for limited partnerships to engage in the brokerage business. On June 28, 1917, the new Uniform Limited Partnership Act was passed, becoming effective on July 1st. Respondents had, prior to June 30th, agreed to form a limited partnership, and on June 30, 1917, finally signed and formally executed the necessary papers. This was Saturday, a legal half-holiday in Illinois. The recorder's office was closed at noon. On Monday July 2nd, the first business day after the execution of the document, without knowledge of the change in the law which occurred on Sunday morning, the lawyer filed the certificate. The session laws of Illinois are not published or put in form for general use until a considerable period after the close of the legislative session and, except by personal inquiry at the state capital for a particular act, the public and even the bar have no opportunity to inform themselves of the passage of acts which do not happen to be discussed in the newspapers. Because of this failure to file the certificate on Saturday afternoon, Judge Landis, who heard the case, held the respondents to be general partners, and as such liable for all of the firm's obligations. As he said, his reason was:

"the failure to comply with the Illinois statute specifying the steps, and promoting the route to be taken to constitute a limited partnership." (Rec., 934.)

As he again stated upon another occasion:

"If we (petitioners) can edge in here and get our money it will be because these gentlemen (respondents) slipped." (Rec., 490.)

Meaning thereby that they had failed to file the papers on June 30th, instead of on July 2nd.

It is thus seen that the basis for holding respondents liable was a purely technical one, devoid of any of the

elements of justice, and of intention on the part of the respondents, and in fact, absolutely at variance with their clearly expressed intention. It was a unique situation, impossible of recurrence, and therefore presenting questions which will not again arise.

The Circuit Court of Appeals disagreed with Judge Landis in holding defendants on this narrow, technical ground, and held that by Section 11 of the Uniform Limited Partnership Act of July 1, 1917 (quoted in full, *supra*), these respondents, actually believing that they had become limited partners, and having renounced and restored all of the money which not only they, but all of the other respondents here, had obtained as profits from the business, had thereby freed themselves from any liability as general partners in said business.

The decision of the Court of Appeals, in effect, therefore, is not merely a construction of the Uniform Limited Partnership Act, but a determination of the effect of one provision of that act upon the Illinois Limited Partnership Act as applied to certain particular facts.

It should also be carefully noted that the failure to file the certificate on Saturday afternoon of June 30th, cannot, under any conceivable set of circumstances, furnish the basis for any uniform construction of the Limited Partnership Act. It is unique to the State of Illinois and can never occur again because the Illinois Act of 1874 was not a uniform law, and the failure to file on Saturday was a coincidence that will never be repeated. Therefore possible future conflict between the decisions of the courts, cannot possibly arise.

Petitioners' entire case is based upon a strict, narrow, technical construction of a statute recommended by the American Bar Association as a means of avoiding the harshness of the former decisions with respect to limited

partnerships and passed by the State of Illinois with that express intention. To sustain this writ would be to undo all that those interested in reforming the law so that it will coincide with an enlightened conception of business fairness have for years been doing to modify the stringent rules heretofore applied to limited partnerships.

Petitioners' suggestion (page 18) that the interests of jurisprudence demand that this court take jurisdiction to determine the proper construction to be placed upon the Uniform Limited Partnership Act, is without merit. An interpretation of the act by this court would be nothing more than its construction of the Illinois statute, and while it, of course, would be of great persuasive influence, it would not, as a matter of law, be binding upon the courts of Illinois, or of any other state which has adopted that act. It would be immaterial (though it is not the fact) if different states placed different constructions upon the statute. This was decided in *May v. Tenney*, 148 U. S. 60, 64, where this court said:

"The fact that similar statutes are allowed different effects in different states is immaterial. As observed by Mr. Justice Field, speaking for this court, 'The interpretation within the jurisdiction of one state becomes a part of the law of that state, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different states to a similar local law, that law in effect becomes by the interpretations, so far as it is a rule for our action, a different law in one state from what it is in the other.' *Christy v. Pridgeon*, 4 Wall. 196, 203. See, also, *Detroit v. Osborne*, 125 U. S. 492."

In *Shelby v. Guy*, 11 Wheat. 361, 367, the court laid down the same doctrine, although, as the court said:

"It is obvious that this admission may, at times,

involve us in seeming inconsistencies; as, where states have adopted the same statutes, and their courts differ in the construction."

Furthermore, this court, notwithstanding any interpretation which it might now give the act, would be required to follow any subsequent contrary ruling by the Supreme Court of Illinois in a case thereafter arising.

Wade v. Traviss County, 174 U. S. 499, 508.

Fairfield v. County of Gallatin, 100 U. S. 47.

Green v. Neal's Lessee, 6 Peters, 291.

This court's decision might, therefore, destroy, rather than create the uniformity petitioners claim they seek and make a rule for the federal courts which could not be enforced against suitors in the state courts, if the Supreme Court of Illinois should disagree with this court in some later decision.

Any decision of this court now made in this case is subject to being overruled by a later case involving the same issues decided adversely by the Supreme Court of Illinois and this court would then be required to overrule its first decision, as was done in *Green v. Neal's Lessee*, *supra*.

"In *Green v. Neal's Lessee*, 6 Pet. 291, a construction given by the Supreme Court of Tennessee to the statute of limitations of that state having been overruled, this court followed the later case, although it had previously adopted the rule laid down in the overruled case."

Wade v. Traviss County, 174 U. S. 499, 508.

The fact that there was a dissenting opinion in the Court of Appeals does not create a conflict in opinion. As this court said:

"Such division, although a close one, does not prevent the opinion of the majority from becoming

the decision of the court, and as such conclusive upon us."

Williams v. Eggleston, 170 U. S. 304, 311.

And the dissenting opinion, starting out with the inquiry as to whether there was *any* evidence to sustain the finding of the court below and advocating a narrow and reactionary construction of a statute, remedial in its nature, does not raise any questions of public interest which are not satisfactorily answered in the majority opinion.

No real or substantial grounds for the issuance of the writ have been presented.

From the foregoing it sufficiently appears that an allowance of the writ in cases similar to the case at bar would, in effect, be entirely contrary to the spirit of the act conferring jurisdiction upon this court to grant the writ here sought and that this court should, therefore, not entertain the petition, irrespective of the question as to whether the Court of Appeals decided correctly.

II.

THE PETITION FOR CERTIORARI SHOULD ALSO BE DENIED BECAUSE THE DECISION OF THE COURT OF APPEALS IS CORRECT. RESPONDENTS ERRONEOUSLY BELIEVED THAT THEY HAD BECOME LIMITED PARTNERS AND BY COMPLYING WITH SECTION 11 OF THE LIMITED PARTNERSHIP ACT OF 1917 THEY WERE ABSOLVED FROM LIABILITY AS GENERAL PARTNERS.

Petitioners contend that Section 11 of the Act of July, 1917, does not apply to limited partnerships formed under the Act of 1874 and affords no relief whatever to any person who may have, in good faith, attempted to organize and who believed he had organized, a limited partnership under the prior act. In other words, that Section 11

affords no relief to any special partnership except such as had been formed subsequent to July 1, 1917. This limitation cannot be found in the wording of the statute itself nor in reasonable construction of it.

Reference is made by petitioners to the definition in Section 2 of the Act of July, 1917, defining limited partnerships; and it is asserted that this definition limits the effect of Section 11 to such as had been formed under the new act. A good test of the theory of petitioners may be found in applying their proposal to the situation if these respondents had organized a grain business under the Act of 1874 by complying as they believed with all its provisions; and thus having formed a limited partnership in which they believed they were limited partners it was discovered subsequent to July 1, 1917, that some defect in filing the certificate, or other technicality cast doubt upon the legality of the limited partnership. Upon petitioners' theory these respondents, although admittedly innocent, and honestly believing that they were members of a limited partnership, could not obtain protection from liability after July 1, 1917, because they were afforded none under the Act of 1874. There would then be created a situation where, for the very identical mistakes, which had been made, those who had been fortunate enough to make their mistake after July 1, 1917, could obtain absolute immunity, whereas those who had organized on June 30th, could obtain no such relief but would be held liable as general partners. Such a construction is wholly at variance both with the letter and spirit of the Amendatory Act. If petitioners' argument be true, it is inconceivable that the legislature acted pursuant to the recommendation of the American Bar Association Committee report, which said:

"The committee is of opinion that the act as drafted preserves all the commercial advantages

of the present Limited Partnership Act *and does away with the very serious disadvantages* which arise from regarding a person who has contributed to the capital of a partnership as a partner to be held unlimitably liable for all partnership debts, unless he has strictly complied with the requirements of the statute." (Proceedings 26th Annual Meeting National Conference Commissioners on Uniform State Laws, Chicago, Illinois, August 23-29, 1916, p. 226.)

What the legislature was attempting to do was to do away with the "serious disadvantages" of the old act. It was not attempting to make a law having the characteristics attributed to it by petitioners.

Petitioners further rely upon the fact that Section 30 of the Amendatory Act says that limited partnerships formed under any statute prior to the Amendatory Act "shall continue to be governed by the provisions of that act." But that provision refers only to an *actual* limited partnership organized under the old act in a lawful manner and does not apply to a situation such as is here involved, where the partners *erroneously believed* that they had organized a limited partnership, but in which they had not literally followed the statute.

The new act was drawn with the intention of covering a situation exactly such as is involved in this case. Under the old law no relief could have been afforded. Under the new act, with the liberal provisions of Section 11, if the supposed limited partners believed they had organized a limited partnership, but later found they were mistaken, they are afforded the opportunity of refunding such income and profits as they had received from the supposed limited partnership and are granted in exchange therefor a release of general liability.

Such construction is in entire agreement with the in-

tention of the Commissioners submitting the Uniform Limited Partnership Act to the Illinois legislature.

Section 11 does not moreover, refer merely to a mistake of fact. It is extremely broad and covers either a mistake of law or fact. A simple reading of its wording at once discloses that fact. One can be mistaken as to law as well as to fact, or as to mixed questions of law and fact, and the new act was thus drawn in order to control either situation. That is the rule even in construing contracts as stated by this court:

"It is well settled that courts of equity will reform a written contract where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law and that therefore the mistake was one of law is not a bar to granting relief."

Philippine Sugar Estate Development Co. v. Govt. of Philippine Islands, 247 U. S. 385, 389.

Nor does the fact that the Illinois law of July, 1917, did not authorize limited partnerships in the brokerage business support petitioners' theory that Section 11 does not apply to limited partnerships attempted to be organized under the old law. The act is not so limited in word or intention, and there are no provisions throughout the entire act which indicate that those who had expected to form, and "erroneously believed" they had formed, a limited partnership in the brokerage business would be excluded from the benefits of Section 11, while those who thought they had formed a partnership for the lumber trade would be included. The spirit of the law is opposed to such contention. Limited partnerships in

the brokerage business were permissible under the Act of 1874 and could continue after the new act became effective.

Nor is the effect of "erroneous belief" under Section 11 changed by the question of falsity in a certificate. False certificates are covered by another Section and have their appropriate penalty. However, no false certificate was involved in this case, and the argument from such a premise must fail as it is not applicable to the facts herein as neither the District Court nor the Court of Appeals found or intimated the existence of fraud by respondents.

Hecht and Finn together had contributed \$190,000, made up of their own and the contributions from the other respondents, to the going business which, beginning on July 2, 1917, was conducted as Marcuse & Company. (Rec., 362, 706.) There can be no doubt that they "believed" that they were "limited partners in a limited partnership." The certificate filed in accordance with law with the county clerk so recited, and this gave public notice (Rec., 362, 365) as did also the notices which they caused to be published. (Rec., 731.) They so held themselves out to the public and to the customers of the firm, on cards, letterheads and many other ways (Rec., 516, 734), so that everybody clearly understood what respondents believed and what all supposed, their *status* in the firm of Marcuse & Company to be. No one has asserted to the contrary. The District Court so held and counsel for these petitioners so admitted, for during the hearing before Judge Landis the court asked counsel for the petitioners:

"The Court: Is there any question about that being the then frame of mind?

Mr. Jacobson: No, your Honor." (Rec., 490.)

These respondents did not attempt to exercise any of the rights of general partners. There was no attempt to show that they did. (Rec., 520-524, 601-604.)

The filing of the petition in bankruptcy was the first notice that these respondents had that there was any claim asserted that they were other than limited partners. As soon as they discovered the defect in the limited partnership agreement they promptly tendered to the court through the receiver of the bankrupt firm, \$46,000 in cash, which more than covered all of the moneys which the bankrupt firm had paid to them and all the other respondents as profits, and in addition thereto interest on the amount and an additional sum for safety, together with a formal renunciation of all profits, rights or claims in the partnership or its property. (Rec., 889-892.) This money was taken by the clerk of the District Court. (Rec., 105.)

The language of Section 11 is novel in the law of partnership and clearly covers the facts involved herein. These respondents had contributed to the capital of a business and "erroneously believed that they were limited partners in a limited partnership." When they discovered their belief was erroneous they followed the statutory provision of preventing themselves from becoming liable as general partners.

A review of the history and purposes of the act of which Section 11 is a part, merely reinforces the plain language of the statute.

The American Bar Association, pursuant to its purpose to have *uniform* statutes throughout the Union procured the various states to appoint a "Commission for the Uniformity of Legislation in the United States."

Pursuant to this plan, the Illinois Legislature passed an act in 1917, creating a commission for this purpose.

"The National Conference of Commissioners on Uniform State Laws," held its twenty-sixth meeting at Chicago on August 23-29, 1916. At this meeting the committee reported the text of the "Uniform Limited Partnership Act" with an "explanatory note" setting forth the objects and purposes of the proposed act. (Proceedings of the 26th Annual Meeting of the National Conference of Commissioners on Uniform State Laws, held at Chicago, Illinois, August 23-29, 1916, p. 384.)

The National Conference at the same session, also approved the report of the Committee on Commercial Law, which contains the following:

"The committee is of opinion that the act as drafted preserves all the commercial advantages of the present Limited Partnership Acts and does away with the very serious disadvantages which arise from regarding a person who has contributed to the capital of the partnership as a partner to be held unlimitedly liable for all partnership debts, unless he has strictly complied with the requirements of the statute."

The proposed statute and the "explanatory note" were printed and bound together and in this form placed at the disposal of the members of the Illinois Legislature. The statute was accordingly enacted by the Legislature of Illinois in the form recommended and became effective on July 1, 1917. (Hurd's Revised Statutes of Illinois, 1917, Ch. 106a, Secs. 45-75.)

The following provision of the new statute would seem to remove all doubt that the legislature intended Section 11 to apply to the facts in this case:

"(1) The rule that statutes in derogation of the common law are to be strictly construed shall have

no application to this act." (Hurd's Rev. Stat. of Ill. 1917, Ch. 106a, Sec. 72.)

This legislation adopted a new public policy in Illinois and this court, in *Commercial National Bank of New Orleans v. Canal-Louisiana Bank & Trust Company*, 239 U. S. 520, refused to apply the prior established rules of law of Louisiana as they stood before the enactment of the Uniform Law on Negotiable Warehouse Receipts, and pointed out that these new statutes could not be interpreted by prior decisions, but were, in effect, the adoption of a "new code of principles." The court said (pp. 528-9):

"It is apparent that if these Uniform Acts are construed in the several states adopting them according to former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the Uniform Warehouse Receipts Act expressly provides (Sec. 57): 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficent object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the Uniform Act and that it should not be regarded merely as an offshoot of local law. * * * We think that the principle of the Uniform Act should have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the states enacting it."

Citation by petitioners of prior Illinois decisions are not, therefore, applicable.

Applying these rules to the new statute and the effect of Section 11, Hecht and Finn did not become general

partners of Marcuse & Company as the Court of Appeals rightly decided.

THE UNIFORM GENERAL PARTNERSHIP ACT.

At the same time that the Uniform Limited Partnership Act was passed, the Legislature of Illinois also passed a General Partnership Act, known as the "Uniform Partnership Act," covering the relations of general partners. The same underlying intention moved the legislature in passing this act as applied to the Uniform Limited Partnership Act. It contained these provisions:

"(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

In determining whether a partnership exists these rules shall apply:

Except as provided by Section 16, *persons who are not partners as to each other are not partners as to third persons.*" (Hurd's Rev. Stat. Ill. 1917, Ch. 106a, p. 2176.)

(Section 16 deals with estoppel against one who holds himself out as a general partner, and is not applicable.)

Hecht and Finn signed an agreement to become *limited* partners with Marcuse and Morris. They did not *agree* to be general partners. They *agreed* to be limited partners only. Applying the provisions of the Uniform Partnership Act, just quoted, it clearly appears that they became *limited* and not *general* partners as to each other and, therefore, as to third persons, and the decision of the Court of Appeals is correct.

Moreover, these parties having intended to form a limited partnership fell into error as to the statute which would be in force on July 1st. But the new statute, instead of merely obliterating the old, expressly continued

it in force for some purposes. The new statute provided that a limited partnership formed under the prior statute should continue to be governed by its provisions. (Sec. 30.) The repealing clause was as follows:

"SEC. 31. Except as affecting existing limited partnerships to the extent set forth in Section 30, the Act of 1874, is hereby repealed."

The new statute provided that "a limited partnership *is formed* when there has been substantial compliance" with its provisions and by parties who were acting in good faith, believing that they had complied with a law which protected them from liability. It is only by adopting a very strict construction of the word "formed" in the statute of 1917, and one which is destructive of its remedial purpose, that the law of 1917, and the protection which it would give to these parties, can be disregarded.

It certainly cannot be doubted that when the articles of partnership were executed and the money paid in by the partners, the partnership was "formed" for some purposes. The acts cannot be treated as wholly void and producing no result whatever. The Act of 1917 expressly stated that it should not impair the obligation of any contract "*existing when the act goes into effect,*" "nor to *affect any * * * right accrued before* this act took effect." (Sec. 28.) Both of these phrases include in their protection every act which had been done prior to midnight on June 30th. The contract of partnership was an "existing contract," and the rights which it created were rights which had accrued *before* the act took effect. There were then no creditors of the partnership, for it had not begun business. Their rights accrued *after* the law took effect.

The rule that the repeal of a statute shall not affect

any existing right was also made a principle of statutory construction by the law of Illinois which existed contemporaneously with the Limited Partnership Act of 1874. Section 4 of Chapter 131 of the Illinois Statutes is as follows:

"No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not as to any offense committed against the former law, or *as to any act done*, any penalty, forfeiture or punishment incurred, or *any right accrued*, or *claim arising under the former law*, or *in any way whatever to affect any such offense or act so committed or done*, or any penalty, forfeiture or punishment so incurred, or *any right accrued or claim arising before the new law takes effect*, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act."

And it seems a fair application of this statute to hold that renouncing any interest in the profits of a limited partnership, comes within the provision that "proceedings thereafter shall conform as near as may be to the laws in force at the time of such proceeding," and should give the protection which the whole character of the Act of 1917 shows to be its dominant purpose.

June 30, 1917, was Saturday. The Act of 1874 was in force during all of that day, and, therefore, the filing of the articles in the office of the county clerk at any time before midnight would have completely complied with the law. But, although the old statute was still in force, the

office of the county clerk was not open after twelve o'clock. The county clerk is not required to keep his office open on legal holidays, and Saturday afternoon is made a legal holiday by statute. The question is not as to the legal effect which this fact would have if it stood alone. For here it, in any view, serves to show the purely accidental character of the main circumstances upon which the case of the petitioning creditors rests.

On Monday morning, when the certificate was presented to him for filing, the county clerk evidently construed the law as authorizing him to receive it, and he accordingly filed it as he would have done if presented before noon on Saturday. (Rec., 364.) The whole argument of the petitioning creditors is based upon the theory that the law authorizing the filing of the certificate in the county clerk's office, was completely at an end, and, therefore, the act of filing availed nothing. But no such harsh or strict construction need be adopted, and we submit should be avoided when its consequences are so penalizing. The law contemplated that these parties should have an entire day in which to complete the formation of this partnership, and, when it closed the county clerk's office at 12:00 o'clock it withdrew from them the opportunity of having what is universally accorded, viz., an entire day for completing the transaction. It is perfectly consistent with the principles of construction, with the provisions of the general statute, and the statute of 1917 itself, to hold that the act of the county clerk in receiving the articles and filing them on Monday morning was justified by the law, and constituted a full compliance with its provisions.

If the Act of 1917 controlled this partnership, because by the terms of the certificate the business was to com-

mence on July 1st, when the new law was in force, then there was such substantial compliance with the act as to secure to the parties the benefit of its protective provisions.

The certificate, which was filed on July 2, 1917, stated in substance the facts required by Section 1 of the new law.

Section 2 of the new act provides:

"A limited partnership is formed if there has been *substantial compliance* in good faith with the requirements of paragraph 1."

Section 11 provides that one who has contributed to the capital of the business, erroneously believing that he has become a limited partner, does not become a general partner or liable for the debts, if, on ascertaining the mistake, he renounces his interest in the profits. These sections and other provisions, all of which are directed against the personal liability of the limited partner, when construed together, show that literal compliance with each of the provisions of paragraph 1 is not essential to the formation of the firm and is not what is meant by the words: "substantial compliance in good faith." Indeed, upon any other theory it would be impossible to give any effect to Section 11. For it does not deal merely with a mistaken belief as to a certain fact, but with an erroneous belief as to the conclusion which is to be deduced from all of the facts and the law applicable to them. It covers the case by broad and inclusive language of an erroneous belief as to any of the facts, or the legal result produced by all the facts.

NO CREDITOR WAS MISLED.

The law of 1917 recognizes the equitable principle that only those who have been misled shall profit by a mistake. It therefore provides that, if the certificate is false,

“One who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false at the time he signed the certificate and learned it within a sufficient time to cancel or amend it.”

In this case no creditor was misled, and no contention to the contrary has ever been made. All of the letterheads and other documents connected with the business showed that Hecht and Finn were only special partners and that the partnership was a limited one. To allow a creditor to hold them personally liable under such circumstances would be merely to give him an unexpected security for his debt, by disregarding the rule of fairness and equity which the statute says shall be the guide in the interpretation of the law.

There is no question of fraud involved. None of the petitioners, in the court below or here, assert that any of them were misled into trading with the firm of Marcuse & Company in reliance upon a belief that any of the respondents were general partners. On the contrary, all knew that the respondents were limited partners and none traded with the firm of Marcuse & Company in reliance upon any other belief than that they were limited and not general partners.

Nor was there any evidence which in the slightest degree showed knowledge or even suspicion on the part of respondents here of the asserted claim that the general partners who had control of the business and of the funds of the partnership had “squandered the funds or had

not made the investments for which the funds were intended," as intimated by counsel. (Petition, p. 20.) On the contrary, it is undisputed that none of the respondents here had the slightest intimation of any kind indicating any state of affairs with reference to the firm of Marcuse & Company, except that they were properly conducted and that the firm was making fair profits. Certified reports of auditors were submitted to the respondents at periodic intervals, and every one of these indicated an increasingly prosperous condition of the business.

III.

RESPONDENTS WERE NOT GENERAL PARTNERS AND CANNOT BE HELD AS SUCH EVEN THOUGH SECTION 11 DOES NOT APPLY.

Counsel for petitioners overlook in this connection the effect of Section 7 of the Uniform Partnership Act, which provides:

"In determining whether a partnership exists these rules shall apply:

(1) * * * persons who are not partners as to each other are not partners as to third persons."

It was and is conceded that none of the respondents here ever intended to become general partners. The quotation (Petition, pp. 51-52) of various provisions of the limited partnership agreement signed June 30th, does not in any sense add to the mere assertion made by the petitioners. The quoted paragraphs wherever they refer to "partners" or "partnership" refer specifically to "limited" partners and "limited" partnership, and wherever those words were used throughout that contract the words themselves, the context and the intention evidenced by all of the language indicates beyond any

doubt that it was a limited partnership and not a general partnership.

A personal right of either limited partner to the fund contributed in their names was carefully excluded.

Nothing which might become due from the partnership to Hecht or Finn was to be paid to them, but was to be paid to the Chicago Title & Trust Company as trustee, and that company was to distribute everything which it thus received among the certificate holders proportionately. The form of the certificates of interest in the trust expressly stated that they were subject to all the terms, etc., of the trust agreement; and each certificate holder, by the acceptance of the certificate, accepted the agreement and became bound in the same manner as if he had been named in and had executed the document itself.

Before any court can reach the conclusion that the respondents were general partners, it must hold that the forms of the papers and the intention of the parties not to enter into a general partnership, not to be liable for losses, and not to incur any personal liability for debts, is of no consequence. It must hold that the case is governed by the old rule that contributions to the capital of a partnership as such, and not by way of loans either to the firm or a partner, coupled with what the report of the American Bar Association describes as a "right to share in the profits and some measure of control over the business," created a liability for debts. If that old rule still existed with such vigor, and were to be enforced with such rigor, that it will transform a fair and honest commercial association like a limited partnership into a mere man-trap, then its application could not be resisted upon the ground that the parts of the transaction, if separately considered, would not constitute a

partnership, or create liability of any kind. Yet the new law itself, to whose provisions petitioners appeal to sustain their case, clearly shows that the old rule, and the theory upon which it was based, were to be abolished.

No creditor has even been misled or in any way prejudiced by anything relating to the method adopted for the formation of this partnership.

No one ever gave credit to Marcuse & Company because of the relation which these parties held toward the firm, either arising from the partnership articles as formed and published, or from the arrangement evidenced by the Hecht-Finn Trust.

No one gave credit to the firm or in any way changed his conduct because of his ignorance of the Hecht-Finn Trust and of the fact that a part of the money was contributed by others than Hecht and Finn.

No person ever believed or acted upon any intimation in dealing with Marcuse & Company that the respondents here were general partners. On the contrary, their acts, their stationery, their cards and everything connected with the conduct of their business specifically stated and evidenced to the world that Marcuse & Company was a limited partnership and not a general partnership.

No general partnership can be found in the papers executed to evidence the intention of the parties, nor is there any basis in either the Limited Partnership Act or the General Partnership Act which justifies the claim that they were general partners, either at common law, or under the Uniform General Partnership Act of 1917, as contended.

That being true, the Court of Appeals correctly decided that even if it should hold that Section 11 did not

apply, nevertheless, the respondents could not be held liable as general partners. It was entirely consistent with the Uniform Partnership Act, which makes the intention of the parties the paramount test for fixing a general partnership.

As the Court of Appeals said:

"If experience shows the statutory test to be impracticable and unwise, the remedy is with the legislature alone. The record discloses no such situation as would suggest that the application here of that test involves hardship or inequity toward the creditors generally. It shows nothing to indicate that creditors were beguiled into extending credit to the firm on the faith that the petitioners (particularly the others than Hecht and Finn) were general partners, nor that petitioners held themselves out as such partners, or did any other of those things which, under Section 16 of the act, might entail on them general partnership liability."

(Opinion Court of Appeals, Appendix, p. 21.)

RESPONDENTS, HECHT AND FINN, CLEARLY BROUGHT THEMSELVES WITHIN THE TERMS OF SECTION 11. THEIR ACT WAS SPECIFICALLY STATED AS MADE ON BEHALF OF, AND THEREFORE, NOW PROTECTS THE OTHER RESPONDENTS.

Petitioners argue (Petition, p. 40) that the respondents other than Hecht and Finn did not bring themselves within the terms of Section 11 of the Uniform Partnership Act of Illinois.

Hecht and Finn were trustees for themselves and all the other respondents under the Hecht-Finn Trust.

When Hecht and Finn, both as such trustees and individually, made the tender and paid into court the \$46,000, their renunciation which accompanied the tender specifically stated that they made such tender on behalf of themselves and all of the other respondents to this

petition. The \$46,000 which they thus tendered included all of the moneys which had been paid, not only to themselves, but to all of the other respondents together with interest thereon. They thereby, both by express words and by clear intention, acted for the benefit of all of the respondents. This act, the Court of Appeals held, therefore, absolved not only themselves but all of the other respondents. The renunciation stated that Hecht and Finn made the tender and renunciation "acting on behalf of themselves and each acting for himself individually and also acting as trustee under a trust individually and also acting as trustees under a trust agreement, a copy of which is deposited with the Chicago Title & Trust Company of Chicago, Illinois, and on behalf of all beneficiaries under said trust agreement," etc. (Rec., 890, 891.)

The only method whereby petitioners sought to connect the respondents other than Hecht and Finn with the partnership was through the Hecht-Finn Trust and that being true, it would seem a harsh rule which would cause said respondents a possible liability through a document and then deny them the benefit of a release under that same document. It is submitted that the Court of Appeals correctly stated the underlying principle when it said:

"Their connection with the partnership being thus traced through their representation by Hecht and Finn, it follows that if such representation would operate to charge them, they should in good conscience also have the benefit of whatever Hecht and Finn may have done which would bring relief from the charges." (Opinion Court of Appeals, Appendix, p. 16.)

On this point the dissenting opinion points out that if Section 11 is applicable, the respondents Hecht and Finn

took the necessary action to bring themselves within its protection, even if the other respondents did not.

In conclusion it is respectfully submitted that there is no proper basis for the issuance of the writ here sought; that no justice will be served by taking this case. By no possible stretch of the imagination can it be argued that the respondents, Hecht and Finn, believed themselves to be anything other than "Limited Partners in a Limited Partnership."

In view of the admitted fact that no creditor was misled into investing with the firm under the belief that they were anything but limited partners there is no inequity in the decision sought to be reviewed; on the contrary, it is just and enforces the equities to afford which the act of July, 1917, was enacted.

The decision of the Court of Appeals is correct and the application for the writ should be denied.

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FILED
JUL 18 1923

W. H. STANSBURY
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES, ET AL.,
Petitioners,

vs.

HENRY VETTE, ET AL.,
Respondents.

DEED AND ARGUMENT FOR PETITIONERS.

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INDEX.

	PAGE
Argument	29
Attempt to form limited partnership failed.....	17, 23, 46
Brief of Argument	22
Buckingham testimony	38
Certificate of partnership not filed in time.....	17, 48
Conclusion	91
"Erroneous belief" not possible	65
Finn testimony	35
Hecht-Finn Agreement	15, 42
Hecht Exhibits 2-5	39
Hoffman testimony	37
Ill. Limited Partnership Act of 1874.....	3-4
Ill. Uniform Limited Partnership Act.....	4-6
Ill. Uniform (General) Partnership Act.....	6
Marcuse testimony	31-35
Partnership Articles of April, 1917	9, 30
Partnership Articles of June, 1917	13, 30
Partnership Act of 1874, Secs. 2, 4, 5, 6, 7 and 8.....	3-4
Pleadings	20
Regenstelter testimony	36
Respondents became general partners.....	26, 74
Sections 6 and 7 of Uniform (General) Partnership Act.....	74
Section 11 of Uniform Limited Act not applicable.....	24, 57
Statement of Facts	7
Studebakers were general partners.....	28, 86
Studebaker Brothers Trust	89
Telegram from New York Stock Exchange.....	30
Uniform Limited Partnership Act, Secs. 1, 2, 3, 11, 30, 31.....	4-6
Uniform General Partnership Act, Secs. 6 and 7.....	6
Zuncker testimony	36

TABLE OF CASES.

	PAGE
A. & E. Enc. of Law, Vol. 19, 2nd Ed. pp. 339, 343, 353.....	82
Buckley v. Lord, 24 How. Prac. 455.....	52
Cummings v. Hayes, 100 Ill. App. 347.....	51
Cyc. Vol. 30, p. 360.....	80
Fougnier v. First National Bank, 141 Ill. 124.....	79
Goacher v. Bates, 280 Ill. 372.....	76
Grinton v. Strong, 148 Ill. 587.....	76
Henkel v. Heyman, 91 Ill. 96.....	81
In re Hoyne, Bankrupt, 277 Fed. 668.....	45
Insurance Company v. Barringer, 73 Ill. 230.....	76
London Insurance Company v. Drennen, 116 U. S. 461.....	76
Manhattan Brass Co. v. Allin, 35 Ill. App. 336.....	82
Meehan v. Valentine, 145 U. S. 611.....	74, 79
Morse v. Richmond, 97 Ill. 303.....	90
National Surety Co. v. Townsend Brick Co. 176 Ill. 156.....	76
People v. Brander, 244 Ill. 26.....	90
Ruling Case Law, Vol. 20, p. 833.....	80
Ruling Case Law, Vol. 20, p. 1065.....	52
Smith v. Knight, 71 Ill. 148.....	76
State Bank v. Butler, 149 Ill. 575.....	74
Walker v. Wood, 69 Ill. App. 542 (affirmed 170 Ill. 463).....	82

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Respondents.

BRIEF AND ARGUMENT FOR PETITIONERS.

On March 11 and 12, 1920, petitions in bankruptcy were filed against Marcuse & Company, a firm engaged in the stock brokerage business in Chicago. On the following day a receiver in bankruptcy was appointed for the firm.

A dispute at once arose as to who were members of the bankrupt firm. The District Court, in sending the case to a referee, held that all the respondents were general partners with Ben Marcuse and L. H. Morris in the bankrupt firm. Respondents, insisting they were not members of the firm, filed a petition to review and revise that holding of the District Court. The Court of Appeals held by a divided court, that Marcuse and

Morris only were members of the firm and exonerated the respondents.

We are now here on a writ of *certiorari* bringing up the record from the Court of Appeals for consideration by this court.

The main question to be here considered is whether the respondents were general or limited partners in the brokerage firm of Marcuse & Company. The partnership was formed by written articles signed June 30th, and recorded July 2, 1917. An attempt was made to form a limited partnership, under the Illinois Act of 1874, with Marcuse and Morris general partners and the other respondents as special partners. The partnership articles were signed June 30, 1917, but the statutory certificate (an absolute prerequisite to the formation of such a partnership) was not filed until July 2nd.

Meantime the Uniform Limited Partnership Act took effect in Illinois on July 1, 1917, and it forbade the organization of limited partnerships for brokerage purposes. On the same day the Illinois Act of 1874 was repealed except as to limited partnerships then existing.

Petitioners also insisted that the certificate of limited partnership that was recorded on July 2nd did not correctly set forth who were the limited partners or truthfully state the amounts of their contributions, and that for this additional reason no limited partnership was created.

The Court of Appeals practically conceded that a limited partnership under the Act of 1874 was not formed or existing until the partnership certificate was filed, that the 1874 Act was repealed before the certificate was filed and that therefore no limited partnership was formed thereunder. But that court held that respondents were relieved from the obligations of general part-

nership by applying Section 11 of the new Uniform Limited Partnership Act (although under it a brokerage firm could not be formed) to the brokerage firm of Marcuse & Company; and also that by Section 7 of the new Uniform *General* Partnership Act of Illinois a situation was brought about whereby the parties, including the respondents, operating for over two years under the firm name of Marcuse & Company were not partners at all nor liable as such. The points on which the Court of Appeals *relieved all the parties to the partnership from all liability as partners* were practically those of confession and avoidance.

The questions involved and the positions taken by the conflicting interests are clearly set forth in the ruling and dissenting opinions of the Court of Appeals. These opinions are printed in the record beginning on page 735 and were also printed as an appendix to our petition for a writ of *certiorari*. We think the reasoning of the dissenting opinion of Judge Evans is unanswerable, and is decisive of the case.

STATUTES INVOLVED.

The determination of the issues involve the application and construction of certain provisions of the Illinois Limited Partnership Act of 1874, the Illinois Uniform Limited Partnership Act, and the Illinois Uniform (General) Partnership Act, the two latter effective July 1, 1917. The material provisions of these statutes are set forth in the margin.

SECTIONS FROM THE ILLINOIS LIMITED PARTNERSHIP ACT OF 1874.

Sec. 2. Limited partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons who shall contribute a specific amount of capital, in cash, or other property at cash value, to the common stock, who shall be special partners, and who shall not be liable for the debts of the

STATEMENT OF FACTS.

Prior to 1917 there was in Chicago a stock brokerage firm named Von Frantzius & Co. In March, 1917, that firm was in bankruptcy. Von Frantzius had died and his estate was then in the Probate Court. Bankruptcy proceedings had been brought about by his death and the consequent discovery of his firm's insolvency. Marcuse had been a partner in Von Frantzius & Co. and Morris an employee. All the other respondents hereto

partnership beyond the amount of the fund so contributed by them, respectively, to the capital stock, except as hereinafter provided.

4. **CERTIFICATE.** Sec. 4. The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.

2. The general nature of the business to be transacted.

3. The names of the general and special partners therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital stock which each special partner shall have contributed to the common stock.

5. The period at which the partnership is to commence, and the period when it will terminate.

5. **CERTIFICATE ACKNOWLEDGED.** Sec. 5. Such certificate shall be acknowledged by the several persons signing the same, before some officer authorized by law to take the acknowledgment of deeds; and such acknowledgment shall be made and certified in the manner provided by law for the acknowledgment of deeds for the conveyance of land.

6. **RECORD OF CERTIFICATE.** Sec. 6. The certificate, so acknowledged and certified, shall be filed in the office of the clerk of the county in which the principal place of business shall be situated, and shall be recorded at large by the clerk, in a book to be kept by him; and such book shall be subject, at all reasonable hours, to the inspection of all persons who may choose to inspect the same.

7. **AFFIDAVIT.** Sec. 7. At the time of filing the original certificate, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the amount in money, or other property at cash value, specified in the certificate to have been contributed by each of the special partners to the common stock, has been, actually and in good faith, contributed and applied to the same.

8. **FILING FOR RECORD NECESSARY—FALSE STATEMENT.** Sec. 8. No such partnership shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed, as above directed; and if any false statement shall be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

had been customers of the firm of Von Frantzius, and all of them, except Vette and Zuncker, were creditors in large amounts.

Marcuse, Morris and all the respondents determined, at the solicitation of Marcuse, to form a new partnership to succeed to the Von Frantzius brokerage business and seek to recover what they had lost through that firm. Vette and Zuncker were induced by Marcuse to come in on the promise of large profits and probably because they were not creditors of Von Frantzius were given a

SECTIONS FROM THE ILLINOIS UNIFORM LIMITED PARTNERSHIP ACT.

"Section 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* A limited partnership is a partnership formed by two or more persons under the provisions of Section 2 having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership."

"Section 2. (1) Two or more persons desiring to form a limited partnership shall

(a) Sign and swear to a certificate, which shall state

- I. The name of the partnership,
- II. The character of the business,
- III. The location of the principal place of business,
- IV. The name and place of residence of each member; general and limited partners being respectively designated,
- V. The term for which the partnership is to exist,
- VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
- VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,
- VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,
- IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,
- X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
- XI. The right, if given, of the partners to admit additional limited partners,
- XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,
- XIII. The right, if given, of the remaining general partner

special agreement by Marcuse indemnifying them against loss.

It was arranged that the new firm should be a limited partnership under the Illinois Act of 1874, with Marcuse and Morris as general partners and all the other respondents hereto as special or limited partners. It was also agreed that 25 per cent of the net earnings of the

or partners to continue the business on the death, retirement or insanity of a general partner, and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution,

(b) File for record the certificate in the office of the recorder of deeds of the county where the principal office of such limited partnership is located.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph 1."

"Section 3. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, brokerage and the operation of railroads."

"Section 11. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

"Section 28. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This Act shall not be so construed as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect."

"Section 30. (1) A limited partnership formed under any statute of this State prior to the adoption of this Act, may become a limited partnership under this Act by complying with the provisions of Section 2; *provided* the certificate sets forth:

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this State prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the provisions of an Act entitled, 'An Act to revise the law in relation to limited partnerships,' approved March 18, 1874, in force July 1, 1874,

new firm should first be drawn out by Marcuse and by him distributed and devoted to making good to respondents their losses through the Von Frantzius firm, and under date of February 1, 1917, a document was drawn up (Rec., 474) in which Marcuse elaborated a plan for settling the estate of Von Frantzius.

The written plan provided that Marcuse should issue certificates to each of the Von Frantzius creditors, stat-

except that such partnerships shall not be renewed unless so provided in the original agreement."

"Section 31. Except as affecting existing limited partnerships to the extent set forth in Section 30, the Act entitled, 'An act to revise the law in relation to limited partnerships,' approved March 18, 1874, in force July 1, 1874, is hereby repealed."

SECTIONS 6 AND 7 OF THE ILLINOIS UNIFORM (GENERAL) PARTNERSHIP ACT.

"Section 6. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this act, unless such association would have been a partnership in this State prior to the adoption of this Act; but this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith."

"Section 7. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Section 16, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

- (a) As a debt by installments or otherwise;
- (b) As wages of an employee or rent to a landlord;
- (c) As an annuity to a widow or representative of a deceased partner;
- (d) As interest on a loan, though the amount of payment vary with the profits of the business;
- (e) As the consideration for the sale of the good will of a business or other property by installments or otherwise."

ing the amount of the indebtedness of the Von Frantzius firm to the holder, and that each of the creditors should assign to Marcuse his claims against the Von Frantzius estate, thereby giving to Marcuse practical control of that estate and that Marcuse should then acquire the estate at judicial sale, dismiss the bankruptcy proceedings, form such a partnership as was afterwards formed, and from the net proceeds of the Von Frantzius estate and 25 per cent of the net earnings of the new firm (a fund set aside for that purpose) pay the Von Frantzius creditors what was owing them from that firm.

The plan thus initiated in January or February, contemplated that it would take until about July 1st to close up the Von Frantzius estate and bankruptcy, and there would be, therefore, several months in which to perfect the contemplated partnership articles and arrangement.

The partnership was finally formed, continued in operation for about two years and nine months and was then put into bankruptcy as above stated.

What was done in forming the partnership, the purposes of the parties, the object of the partnership and nearly all other matters required for consideration and determination of this case, are largely shown in three documents that appear in the record. These three documents are:

1. A partnership agreement dated April 2, 1917, and signed at that time, for a limited partnership to carry on a brokerage business, the firm to be composed of Marcuse and Morris as general partners and *all* the respondents hereto as special partners. (Rec., 269.)*

2. An agreement for a like limited partnership dated

*NOTE: All references are to top paging of the reprint of the transcript of record.

April 2, 1917, but signed June 30, 1917, with Marcuse and Morris as general partners and the respondents Hecht and Finn as special or limited partners. This agreement, although dated April 2nd, is usually referred to as the partnership agreement of June 30, 1917, as it was signed on that date. (Rec., 20.)

3. An agreement dated June 30, 1917, and on that date signed by Hecht and Finn and approved by Marcuse and Morris, providing that Hecht and Finn, as special partners under the partnership articles signed June 30th, should represent all the respondents including themselves, and that the special capital should be contributed by all the respondents as originally determined. This document is generally referred to as the Hecht-Finn trust agreement. (Rec., 26.)

Around and upon these three documents hangs all the other evidence in the record, showing the circumstances under which those documents were signed, the reasons leading to certain changes therein, the differences between, and the contemporaneous construction put upon the documents by the parties for the two years during which the partnership continued. In a proceeding of this nature all facts on which there is any evidence must be resolved in favor of supporting the District Court's decision.

Original Partnership Agreement.

The gist of the first partnership agreement is given in the statement of facts by the Court of Appeals as follows:

"The record discloses that under date of April 2, 1917, all the alleged partners except the Studebakers (one Hoffman signing in his own name, but in fact as representing the Studebaker interest), executed an agreement which provided for carrying

on at Chicago a brokerage business of buying and selling on commission stocks, bonds, grains, etc., for a period of five years from such date, under firm name of Marcuse & Co.; that such firm be a limited partnership under the statute of Illinois, Marcuse and Morris the general partners, and the others special partners; the contributions of the latter to be, Hecht \$25,000, Hoffman \$50,000, Vette \$30,000, Zuncker \$25,000, Finn \$31,500 and Regensteiner \$28,500, total \$190,000; that the business be conducted and managed by Marcuse and Morris, they to receive named salaries, and that on the contributions of Marcuse, Morris and of the special partners should be paid interest at 6 per cent per annum; that thereafter 25 per cent of the net profits be paid to Marcuse to be applied by him on certain certificates which he would issue representing debts due from Von Frantzius & Co. (then in bankruptcy), all of such limited partners, except Vette and Zuncker, being large creditors of the Von Frantzius concern; and that *after* such certificates are paid, the said 25 per cent should be paid to all the parties to the agreement except Morris; that 10 per cent of the net profits of the business was payable to Morris, *and the balance of profits was to be divided periodically between the parties in proportion to their contributions to the whole capital*; that the special partners be limited in their liability to the amounts respectively contributed to the capital, and that they should have no liability for debts of the partnership beyond such contributions; that Marcuse and Morris should be in charge of and carry on the business, and that *the special partners shall have right to examine the books and have them audited, and in certain contingencies to have the business liquidated*. After execution of the agreements they were left with one of the lawyers pending carrying out of certain conditions, mainly the dismissal of the Von Frantzius bankruptcy proceedings, with which concern Marcuse had been in some way connected. One of the contributions of Marcuse toward the firm's capital was a seat on the New York Stock Exchange estimated to be then worth \$68,000."

After providing for the 6 per cent interest, the 25 per cent for the Von Frantzius creditors and some other expenses, the contract provided that:

"All of the balance of the said net profits of said business shall be divided among *all* of the parties hereto except the said Morris in the proportions in which they have contributed to the capital or capital stock of said firm." (Rec., 23.)

It was further provided

"that the said partners shall and will during all times during said copartnership bear, pay and discharge in the same ratio and proportion in which the profits are to be divided as aforesaid, all expenses incurred in the operation of the said business, * * * and that *all losses of every kind sustained in said business shall be paid by the said copartners* in the same ratio and proportion as said profits are divided." (Rec., 23.)

On April 12, 1917, this partnership contract was signed by all the parties. All the parties (Hoffman acting for the Studebakers) were present in one room at the time of the signing. (Rec., 227.)

The certificate required by the Act of 1874 was prepared reciting that all the respondents (Hoffman still acting for the Studebakers) desired to form a special partnership under the Act of 1874 to conduct a brokerage business. It gives the amount of the contributions as provided in the partnership articles and was severally signed and acknowledged by each of the special partners. An affidavit of Marcuse was attached certifying that the contributions of the special partners, aggregating \$190,000, had been actually and in good faith paid in and applied to the purposes of the partnership.

The signed partnership agreement was delivered to Colonel Foreman, counsel for Vette and Zuncker, to be held by him until Marcuse had acquired the Von Frantzius assets and secured dismissal of the bankruptcy.

proceedings against the Von Frantzius estate. (Rec., 318.)

Shortly after this escrow deposit a serious obstacle arose. A membership on the New York Stock Exchange was absolutely necessary to carrying on the business, but when Marcuse went to New York to have his firm admitted to the exchange, he discovered that the rules of that exchange provide, *first*, that in any brokerage firm with a membership on that exchange there could only be two special partners, and, *second*, that no person engaged in any other business could be a partner in such a firm. On his return from New York, Marcuse received the following telegram from the secretary of the New York Stock Exchange:

"The committee on admissions would not object to a firm having two special partners if they were not engaged in any other business and were otherwise passed upon favorably by said committee." (Rec., 476.)

No thought of abandoning the plan for the partnership occurred to any of the parties who had signed the first agreement. They determined to circumvent or avoid the rules of the New York Stock Exchange. It was found that Hecht and Finn had retired from business and were therefore qualified as members of a brokerage firm. The other special partners were engaged in other businesses. It was determined that the partnership should proceed just as originally planned, with, however, Hecht and Finn appearing as special partners and *representing* all the respondents. No other change whatsoever was to be made in the arrangements.

The Studebakers' counsel testified that the intention was to withdraw them entirely from the partnership, but this testimony is not consistent with, and was con-

tradicted by that of Marcuse, Finn, Regensteiner, Hoffman and Zuncker. (Rec., 456-474, 257, 428, 680, 380.)

It is conceded in both the controlling and dissenting opinions of the Court of Appeals that upon a petition to review and revise only questions of law can be considered, and that every fact necessary to support the District Court's order which is supported by any evidence must be assumed as existing. Counsel on both sides of the case concurred in this proposition. In the argument, however, we will show from the testimony that the court could have reached no other conclusion than that the sole object of redrafting the original partnership articles was to avoid the rule of the New York Stock Exchange.

Revised Partnership Agreement.

This brings us to the second vital document in this case. It is the revised partnership agreement (Rec., 20, still dated April 2nd but actually signed June 30th, under which the partnership was finally formed and under which it continued for over two years, when it was put into bankruptcy. As if to preserve the continuity of the transaction and to show that it is but a paraphrase of the former partnership agreement, it bears the same date, April 2, 1917.

Of this second document the Court of Appeals in its statement of facts said:

"The stated objects of the partnership, the name and the details respecting rights, duties and immunities of the parties, and the character and amount of capital contributions were in all essential features the same as under the first contract, except that Hecht and Finn, the special partners, each agreed to contribute \$95,000, and the term was five years from July 1, 1917."

This agreement was signed by Marcuse, Morris, Hecht and Finn. The total amount of capital contributed by all the respondents under the first agreement was \$190,000. The amount of capital recited as contributed by Hecht and Finn under the new agreement was \$190,000. The contribution under the second agreement was actually by all seven of the respondents, each contributing the same amount that he agreed to contribute under the first agreement. The provisions for a limited liability are the same. The provision that 25 per cent of the net profits should go to Marcuse to pay the creditors of Von Frantzius is the same. The provision for Morris and that all other net profits shall be divided among all the others is exactly the same. The provisions concerning the keeping of books, access thereto, general statements, trial balances, *declaring dividends, sharing in losses*, the amount of special capital, the appointment of auditors and the authority of the special partners to wind up the business, are all the same as in the former agreement.

Necessarily there were some differences or the second contract would still be obnoxious to the New York Exchange. Necessarily this second document omitted on its face some rights of respondents other than Hecht and Finn. Although the latter two actually contributed only about one-third of the special capital, they could, under the second agreement, draw the dividends due all the special partners. The respondents other than Hecht and Finn, although contributing two-thirds of the special funds, were without power to appoint an auditor, without power to order a dissolution.

Thereupon the third principal document was drawn on the same day and is sometimes referred to in the record as the Hecht-Finn trust. It appears at page 26 of the printed record.

The Hecht-Finn Agreement.

This instrument was executed June 30th, at the same time as the second partnership agreement and as part of that transaction, and has attached to it as an exhibit a copy of the partnership agreement of June 30th. It is sometimes called the Hecht and Finn trust, though in reality no trust at all.

This third agreement recites that Hecht and Finn are entitled, as special partners under the *second* partnership articles, to 6 per cent on the special capital contributed by them and also to their share of the profits; that the other five respondents are entitled to a like distribution of interest and profits on the capital they furnished; recites the amount of the contribution by each; provides for a certificate from the Chicago Title & Trust Co. showing the contribution of each; provides that the entire dividends payable to all the respondents, including Hecht and Finn, shall be paid by the firm to the Chicago Title & Trust Company, which shall thereupon distribute such receipts in accordance with the interests of the seven respondents or certificate holders in the partnership and calls Hecht and Finn trustees. It restores to the respondents (other than Hecht and Finn) their access to the books of account showing, among other things, all losses sustained, liabilities incurred and all payments by and receipts of general partners, and requires that they be furnished with accounts showing assets, *liabilities* and *losses* and with monthly balance sheets.

It further provides that auditors shall be appointed, not by Hecht and Finn, but by a majority of the holdings of the seven special partners. It restores to the control of the majority of them the right to dissolve the firm

if the auditors' report is unfavorable, provides that Hecht and Finn shall act as directed by the wishes of a majority of the respondents, and if they do not do so, the holders of the majority of them can apply for a dissolution of the partnership, and in the event of the death of both trustees the majority of the remainder of the special partners shall appoint a new trustee.

Under its provisions, the Chicago Title & Trust Company were to issue certificates representing the following amounts:

Frank A. Hecht,	\$25,000
Joseph M. Finn,	31,500
Richard Yates Hoffman,	50,000
Theodore Regensteiner,	28,500
Henry Vette,	30,000
Peter M. Zuncker,	25,000

There was attached to the agreement as an exhibit, a document signed by Marcuse, Morris, Hecht and Finn, both individually and as copartners under the name of Marcuse & Co., consenting and agreeing to carry out all the terms and provisions of the Hecht-Finn agreement. (Rec., 31.)

The second partnership agreement and the Hecht-Finn agreement with Marcuse and Morris joining in the latter, restored all respondents to exactly the same rights which they had under the first partnership agreement, the only difference being that under the latter document only two limited partners appeared on the face of the papers and the rule of the New York Stock Exchange was ostensibly avoided.

Closing the Agreement.

Pending these negotiations, Marcuse had kept open the former place of business of Von Frantzius and continued the ticker and blackboard service.

On June 30, 1917, all respondents or their attorneys went to the office of Marcuse & Co.; Hecht and Finn drew their checks to Marcuse & Co. for \$25,000 and \$35,000, respectively (the amount they were to personally contribute), and each of the other respondents drew their checks for the amount of their respective contributions, making the checks payable to the order of Hecht and Finn, who immediately endorsed them over to Marcuse & Co. and they were placed to the credit of that company.

The attempt to form a limited partnership failed. The certificate of limited partnership did not correctly state the membership of the proposed firm or the amount of the contributions thereto, and was not filed until after the repeal of the only act under which a limited partnership could be formed to conduct a brokerage business.

Prior to July 1, 1917, limited partnership in Illinois could only be formed under the Illinois Limited Partnership act of 1874. Sec. 4 of that act was:

"The persons desirous of forming such partnership shall make and severally sign a certificate which shall contain: 1. * * *; 2. * * *; 3. The names of the general and special partners therein, distinguishing which are general and which are special partners, and their respective places of residence; 4. The amount of capital stock which each special partner shall have contributed to the common stock."

Secs. 5 and 6 require that this certificate shall be acknowledged by the "several persons signing the same," and filed in the office of the county clerk.

Sec. 7 provides that at the time of filing the original certificate an affidavit of one of the general partners shall also be filed stating that the amount of money speci-

fied in the certificate to have been contributed by the special partners has been, actually and in good faith, paid in.

Sec. 8 provides:

"8. No such partnership shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed, as above directed; and if any false statement shall be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners."

A new certificate was prepared June 30th, reciting that Marcuse, Morris, Hecht and Finn desired to form a limited partnership under the provisions of the 1874 limited act. (Rec., 239.) It recites that it is made under the 1874 act. The certificate names Marcuse and Morris as general partners and Hecht and Finn as special partners and the amount of contribution of the two special partners as \$95,000 each. This certificate was not filed in the office of the county clerk until *July 2, 1917*.

In 1917 Illinois passed the Uniform Partnership act and the Uniform Limited Partnership act. The new acts took effect on July 1, 1917, and the new Uniform Limited Partnership act expressly repealed the Limited Partnership act of 1874, except as to then existing limited partnerships.

The new Uniform Limited Partnership act provided that a limited partnership could be formed to carry on any business except banking, insurance, *brokerage* and the operation of railroads. It materially changed the form of the certificate to be signed and provided that the certificate should be recorded in the office of the Recorder of Deeds. In many other material ways it differed from the Limited Partnership act of 1874.

There is no serious contention in the record that a

limited partnership was formed either under the Act of 1874, or under the Uniform Limited Partnership act of 1917. One vital step which the 1874 act expressly required as a condition precedent to the formation of a limited partnership was not taken until after the act had been repealed. The new Uniform Limited Partnership act expressly provided that a brokerage business could not be carried on as a limited partnership, and no attempt was made to conform to the requirements of that act.

The partnership of Marcuse & Co. started business on July 2nd, carried on a brokerage business for about two years and nine months, when it failed.

After the petition in bankruptcy and the intervening petition of Lachman, asserting the liability of Hecht and Finn as general partners, had been filed, Hecht and Finn tendered the receiver \$46,000. This amount was claimed to be all that Hecht and Finn and the other respondents had received from Marcuse & Co. by way of interest, income and profits from Marcuse & Co., and was accompanied by a written document by which they "renounced" any claims against the assets of the copartnership arising out of the investment of \$190,000 as special partners in that firm. This was done in an attempt to bring themselves under Section 11 of the new Uniform Limited Partnership act.

None of the other respondents contributed to the amount of this tender, but expressly refused to do so and expressly refused to authorize Hecht and Finn to make the tender on their behalf or to renounce their interest in the partnership. The tender was refused and the money was paid into court.

Pleadings.

On March 11th the original petition in bankruptcy was filed by Giles and others against Marcuse, Morris, Finn and Hecht, copartners doing business as Marcuse and Company. On the following day a receiver was appointed.

March 12th Mayer and others filed intervening petitions adopting the allegations of the original creditors' petition.

March 15th Lachman filed his intervening petition alleging the partnership to be in fact a general partnership.

Hecht and Finn answered denying that they became general partners, and claiming further that if they had so become general partners they had absolved themselves from liability by the tender to the receiver of the profits they had received from the firm under Section 11 of the new act.

April 1st Finn filed an amendment to his answer alleging that in assuming the position of special partners, Hecht and himself were acting not only for themselves but on behalf of Regensteiner, Vette, Zuncker and one Richard Yates Hoffman, the latter in turn acting for the Studebakers; and that if they were liable as general partners, the other respondents were also liable.

Vette, Zuncker, Regensteiner and the Studebakers filed separate answers denying that there were special partners.

By stipulation of the parties the court first heard the question of partnership, reserving the question of insolvency.

On June 21st the district court announced that he

had reached his conclusion on the question presented and stated that conclusion to be that Vette, Zuncker, Regensteiner and the Studebakers together with Hecht and Finn were all general partners in the firm of Marcuse & Company; that the so-called special partnership, by reason of failure to comply with the Illinois statute, was a general partnership; and that the Studebakers, Zuncker, Vette and Regensteiner had selected Hecht and Finn as their agents for the operation of the special partnership. This conclusion the court stated to be his finding.

The court then referred the cause to a referee on the issue of insolvency.

To review this finding and order of the district court the respondents filed in the Circuit Court of Appeals the petition to revise and review. The Circuit Court of Appeals directed that the order referring the cause to a referee on the issue of insolvency be modified by striking therefrom the names of all respondents except Marcuse and Morris.

Error Relied On.

Petitioners assign as error the ruling of the Circuit Court of Appeals that the respondents were not general partners in the firm of Marcuse & Co.

BRIEF OF ARGUMENT.

I.

ALL RESPONDENTS ARE EQUALLY LIABLE. IN THE ATTEMPT TO FORM THE SPECIAL PARTNERSHIP UNDER THE JUNE 30TH AGREEMENT, HECHT AND FINN WERE ACTING AS THE AGENTS OR REPRESENTATIVES OF THE OTHER RESPONDENTS. THE ORIGINAL PARTNERSHIP AGREEMENT OF APRIL 2ND, SIGNED BY ALL THE PARTIES AND PLACED IN ESCROW, WAS ABANDONED, AND THE TWO LATER DOCUMENTS SUBSTITUTED THEREFOR, TO CIRCUMVENT THE RULE OF THE NEW YORK STOCK EXCHANGE. THE CHANGE WAS ONE OF FORM ONLY.

(a) Under the partnership agreement of June 30th, and the Hecht-Finn Trust, all respondents had identically the same rights and are subject to the same liabilities.

1. They all contributed to the capital.
2. They all shared in the profits and losses.
3. They all were entitled to examine the partnership books and into the partnership affairs.
4. They all were to receive monthly statements and annual audits and inventories.
5. The majority had the right to dissolve the partnership.

(b) Under the partnership agreement of June 30th, the only discretionary power Hecht and Finn, the special partners, had was to appoint auditors, and under the Hecht-Finn Trust their action in appointing auditors was subject to the control of the majority of the contributors.

(c) The so-called Hecht-Finn Trust is not a trust at all. It is nothing more than a declaration of agency. Hecht and Finn held no property, received no dividends

and made no disbursements. They exercised no rights, except in the appointment of auditors, and in this, they were under the control of the majority of the contributors. It was not a trust at all.

(d) The final adoption of two documents to evidence the parties' rights instead of the single partnership agreement, was merely to avoid the rule of the New York Stock Exchange and was not intended to affect substantial rights.

II.

THE ATTEMPT TO FORM A LIMITED PARTNERSHIP FAILED, AND NO LIMITED PARTNERSHIP WAS EVER FORMED.

(a) The Act of 1874 under which the attempt was made to form this limited partnership provided, that a special partnership should not be deemed to be formed until the statutory certificate had been filed (Hurd's Ill. Rev. Stat. 1915-16, Ch. 84, Sec. 8; Brief, p. 4 margin). The certificate was not filed until after the repeal of the act.

(b) Had the certificate been filed prior to the repeal of the act, respondents would have been liable as general partners because of the false statements in the certificate.

1. The certificate gave the contributions of Hecht and Finn as \$95,000 each. Hecht contributed but \$25,000, Finn \$31,500.

2. The certificate did not show the amounts contributed by the other respondents and did not even give their names.

3. The statute under which they attempted to form this special partnership expressly provided that if any false statements are made in the state-

ment, all persons interested in the partnership shall be liable as general partners.

Ill. Rev. Stat. 1915, Ch. 84, Sec. 8; brief page 4 margin.

Cummings v. Hayes, 100 Illinois App. 347.

Buckley v. Lord, 24 How. Prac. 455.

(c) No limited partnership was formed under the Uniform Limited Partnership Act.

1. The Uniform Limited Partnership Act, effective in Illinois, July 1, 1917, provided that limited partnerships could be formed for any purpose except banking, *brokerage*, insurance or the operation of a railroad. (Cahill's Ill. Rev. Stat. 1921, Ch. 106a, Par. 47; Brief, page margin.)

2. This legislation is in accord with the public policy of Illinois, which does not permit of the incorporation of a company to carry on a *brokerage* business, and requires banking and insurance companies to be incorporated under statutes distinct from the general corporation act with special provisions for protection of customers.

3. No attempt was made to comply with the essential provisions of the Uniform Limited Act.

III.

SECTION 11 OF THE ILLINOIS LIMITED PARTNERSHIP ACT HAS NO APPLICATION.

(a) Section 11 was not intended as an amendment to the prior limited partnership acts or to apply to any partnership formed or attempted to be formed under prior acts.

1. The Uniform Act defines the term "limited partnership" as a partnership formed under the provisions of Section 2, of the Uniform Act. Thereafter, throughout the act, the words "limited partnership" are used without qualification in accordance with this definition. When a limited partnership formed under any other act is intended it is so expressly designated.

2. Therefore, Section 11, in providing that a person erroneously believing that he has become "a limited partner in a limited partnership" etc., means a limited partnership formed under the Uniform Act, and not formed under prior acts.

3. Section 30 of the Uniform Act expressly provides that limited partnerships formed under existing statutes should continue to be governed by those statutes until they bring themselves under the Uniform Act by complying with its provisions. This section was intended to prevent interweaving of the statutes and the provisions of the Uniform Act being construed as an amendment to the prior statute. As respondents did not and could not bring themselves under the Uniform Act, this attempted limited partnership is governed solely by the prior act and that act has no provision similar to Section 11 of the Uniform Act.

(b) Even if it could be contended, that although ignorant of the passage of the Uniform Act, the attempt was made to form this limited partnership under that act, section 11 would not relieve respondents from liability, as that section was not intended to relieve from liability as general partners, parties attempting to form a limited partnership for a purpose expressly prohibited by that act. By excluding brokerage business from the purposes for which a limited partnership can be formed, the legislature intended that such business could only be carried on as a general partnership. To apply Section 11 to such a partnership would be to nullify the legislative intention for unlimited liability in a brokerage business.

(c) Respondents could have had no "erroneous belief" that they were limited or special partners.

1. Ignorance of the law cannot be made the basis of an erroneous belief.

2. All the parties knew that a false and misleading certificate had been filed for the purpose of avoiding the rule of the New York Stock Exchange.

(d) Respondents did not renounce or return all profits they had received from Marcuse & Company.

1. The principal motive actuating most of the respondents in going into the new firm, was to secure payment of their debts against Von Frantzius & Company. Dividends paid respondents indicated there were substantial earnings distributed, 25 per cent of which were to be applied on debts to the Von Frantzius creditors. Respondents, as creditors of Von Frantzius, received a substantial part of the 25 per cent of the profits so applied and did not tender or return any part of the money they received as Von Frantzius creditors.

(e) Under no circumstances can Vette, Zuneker, Regensteiner, and the Studebakers avail themselves of Section 11.

1. The entire amount returned and tendered to the receiver was furnished by Hecht and Finn. The other respondents refused to contribute and have kept all profits they received from Marcuse & Company. They likewise refused to permit Hecht and Finn to renounce on their behalf further interest in the business, and made no such renunciation themselves.

IV.

THE LIMITED PARTNERSHIP HAVING FAILED, RESPONDENTS ARE GENERAL PARTNERS BOTH AT COMMON LAW AND UNDER THE UNIFORM GENERAL PARTNERSHIP ACT OF 1917.

(a) Section 6 of the Uniform General Partnership Act, effective July 1, 1917, defines a partnership as an association of two or more persons to carry on as co-owners a business for profit. This is a codification of the common law definition of partnership.

Meehan v. Valentine, 145 U. S. 611.

State Bank v. Butler, 149 Ill. 575.

(b) The respondents come squarely within this definition as they were carrying on as co-owners a business for profit.

(c) Section 7 of the Uniform General Partnership Act, which provides that persons who are not partners as to each other are not partners as to third persons, does not relieve respondents from liability.

1. The "intention" in ascertaining whether a partnership exists is the legal intention shown by the acts of the partners, and if the parties enter into a relationship to which the law attaches a partnership liability, they will be partners even amongst themselves, and certainly as to third persons whether they so intended or not.

Fouquier v. First National Bank, 141 Ill. 124.

Mechan v. Valentine, 145 U. S. 611.

20 Ruling Case Law, p. 833.

30 Cyc. page 360.

2. Where parties attempt to form a limited partnership, but fail through non-compliance with the statute, they become general partners.

Henkel v. Heyman, 91 Ill. 96.

Manhattan Brass Co. v. Allin, 35 Ill. App. 336.

Walker v. Wood, 69 Ill. App. 542 (Aff. 170 Ill. 463).

19 A. & E. Enc. of Law, 2nd ed. pp. 339, 343, 353.

(c) Respondents did intend to become partners between themselves. They may have hoped or intended to become special partners, but they intended to enter into a partnership relation.

V.

GEORGE M. AND CLEMENT STUDEBAKER WERE PROPERLY
HELD TO BE PARTNERS.

(a) Marcuse, Brown and Hoffman all testified that the Studebakers, who were creditors of Von Frantzius & Company, agreed to contribute \$50,000 to Marcuse & Company for the purpose of recovering the amount due them from Von Frantzius.

(b) Neither of the Studebakers testified otherwise, and the only testimony even inferentially in conflict with that of Marcuse, Brown and Hoffman, is the testimony of Buckingham that he told Marcuse the contribution would come from the Studebaker Brothers Trust. It is immaterial by whose check or from what source the Studebakers obtained the money they paid into the partnership.

(c) The Studebaker Brothers Trust was itself but a joint venture by which the two Studebakers had turned over part of their property to a trustee in which the entire control, management, and beneficial interest (except a certain compensation to Brown for his services) was reserved to the two Studebakers. In Illinois, joint ventures or stock companies of this character are nothing but partnerships.

People v. Brander, 244 Ill. 26 and cases there cited.

Morse v. Richmond, 97 Ill. 303.

ARGUMENT.

THE ORIGINAL PARTNERSHIP AGREEMENT SIGNED APRIL 2, 1917, THE SECOND PARTNERSHIP AGREEMENT SIGNED JUNE 30TH, AND THE SO-CALLED HECHT-PHEN TRUST SIGNED JUNE 30TH, ARE ALL PARTS OF THE SAME SCHEME AND TRANSACTION. ALL RESPONDENTS ARE EQUALLY BOUND.

The plan of Marcuse for building up a new partnership to take the place of Von Frantzius' brokerage house is best shown in the form of a certificate, dated February 1, 1917, he issued to several of the respondents. (Rec., 474.) In it Marcuse agrees, in consideration of the assignment to him of claims against the old firm, to settle the estate of Von Frantzius, to buy in the brokerage business formerly conducted by Von Frantzius, to organize a new brokerage firm to be composed of himself and others, to turn in the Von Frantzius assets to the new firm, to devote his entire time to the partnership, to issue certificates for the amounts due from Von Frantzius and to pay the certificates from the moneys and assets of the Von Frantzius estate and the profits of the new partnership. To do this and to start the new firm, he said he would need about \$200,000 outside capital, and would himself, in addition thereto, make certain contributions of cash and stock exchange memberships to the new firm. It was further provided that the certificates be issued by Marcuse to take effect when he acquired, in the manner described, 80 per cent of the claims against the Von Frantzius estate. The certificates contained a provision that the holder of a certificate "expressly assents to all of the terms, conditions and provisions of this certificate."

The Partnership Agreement of April 2.

After Marcuse, in January and February, 1917, laid before the respondents his plan for forming the new partnership, negotiations proceeded to the point that a partnership agreement was dated and signed by Marcuse, Morris and all the respondents on April 2, 1917. In making this first partnership agreement Hoffman represented the two Studebakers and held their interests in his name. (Rec., 680.)

This first partnership agreement is summarized in the quotation from the opinion of the Circuit Court of Appeals in our statement of facts. That quotation states that in certain contingencies the special partners had the right to have the business liquidated. Those contingencies were that if auditors, designated by the special partners having contributed the majority of the capital, should certify that the business of the firm was not being conducted in a safe, conservative and judicious manner, the firm, at the option of a majority of the special partners, should be dissolved.

Had these partnership articles gone into effect and the statutory requirements been complied with, they would undoubtedly have constituted a valid limited partnership under the Illinois law of 1874.

The Amended Partnership Agreement of June 30th.

After the contract was signed Marcuse went to New York to see the New York Stock Exchange about admitting his firm to that exchange. He there learned that a firm with more than two limited partners, or with limited partners engaged in other business, could not be admitted to the Exchange. After he returned to Chicago he received a telegram dated May 8, 1917, to that

effect. (Rec., 262.) He reported to all the respondents this new obstacle and told them that the original partnership contract would have to be revised. (Rec., 454.)

The respondents (other than Hecht and Finn) take the position that the inchoate partnership of April 2nd was finally and definitely abandoned and that they had no part or share under the articles of partnership of June 30th. The courts below found otherwise and in a proceeding of this kind all possible facts, concerning which there is any evidence, must be resolved in favor of the decision of the District Court. We do not see how the claim can be here insisted upon that there was any definite change in plan of partnership, but as the respondents (other than Hecht and Finn) have always heretofore in the lower courts pressed the point that they were not interested as partners in the second partnership articles, we will here review some of that evidence on that point, with a view to showing that there was ample evidence to support the District Court in holding that there was only one plan embracing both sets of articles and that only the form of the papers were changed to circumvent the rules of the New York Stock Exchange.

Marcuse testified that when he returned from New York, he at once communicated to all the respondents and the various attorneys acting for them the obstacle that they had run against in the rule of the New York Stock Exchange. In his testimony, to which we are about to refer, he frequently mentions various attorneys to whom he spoke. Those attorneys were acting for the following parties:

Col. Foreman and Robertson were attorneys for Vette and Zuncker.

Sidney Stein was attorney for Marcuse and Finn. Col. Buckingham and Hoffman were attorneys for the Studebakers.

Scott Brown was an attorney and Chicago manager of the business affairs of the Studebakers. Louis Grollman was attorney for Regensteiner.

Marcuse, after stating that he communicated the contents of the telegram from the New York Stock Exchange to the other proposed partners and their attorneys and discussed this matter with them at various times, said (Rec., 457):

"I told them that it was necessary—it had become necessary to reduce the number of special partners to two, and that Mr. Frank A. Hecht and Mr. Jos. M. Finn were willing to become the special partners * * * and that the firm would be permitted to become a regular firm after this arrangement had been completed and the contribution made by the balance of them."

The court then asked him if he told them that the New York Stock Exchange rule limited the number of special or limited partners to two and he answered "yes."

In response to a further inquiry from the court whether he told them anything else, he replied (Rec., 458):

"Oh, I told him that we would conclude our partnership and go ahead just the same, and obviate the fact that we could show so many special partners by letting two of them assume the names of special partners for the others."

The witness said that shortly after his return from New York all the respondents and their attorneys met in the office of Col. Foreman and Mr. Stein then outlined the new proposition. As to what Stein told them at that time, Marcuse testified (Rec., 460):

"He told them that the purpose of forming this partnership would not be changed by combining these partners into two special partners, and that it would—that it ought not to make any difference to any of them whether they would have carried

the name of special partners *openly* or contribute toward the fund."

Speaking of keeping the business going between the first partnership articles and perfecting the revised arrangements, he said:

"I don't know as I said it at this particular meeting, but I told them that I had acquired the lease, that I was paying the rent, that I was keeping the ticker in the office, and the board marker, and that I had bought the fixtures from the administrators and that I had acquired a contract to finish the office, the additional office, which had been taken by the former firm, and which had not been finished. The furniture was all under contract."

"Q. Now, did you ever tell Mr. Zuncker the original deal was off or the firm wouldn't go on and do business?"

A. No. " (Rec., 462)

In the succeeding ten or fifteen pages of his testimony, Marcuse told about his consulting with respondents and their lawyers or representatives, and on page 470 he said:

"A. I told Mr. Vette and Mr. Zuncker—I told first their attorney—or may I correct that? I told Mr. Stein. I told Colonel Foreman and Mr. Robertson, and I told Vette and Zuncker when I saw them the same facts as I had told everyone of the original signers."

"Q. What, if anything, did they or either of them say, Vette or Zuncker, to you?"

A. They were satisfied." (Rec., 471.)

He had previously testified (Rec., 467):

"A. Mr. Scott Brown told me that he was satisfied to have Mr. Hecht represent their interests."

"Q. And was that in direct connection with the formation of the partnership and the Hecht-Finn Trust agreement?"

A. Yes."

In answering an objection to the evidence just quoted, the court said (Rec., 471):

"The Court: That is on this theory: Here are half a dozen men. There has been a shift in this arrangement. It has been established pretty clearly or, at least, *prima facie*, that their minds are harmonious on a certain program at a certain time, to accomplish a certain result. By reason of a circumstance intervening when he went to New York, there was a shift in that situation. This man came back here and he went around and talked to these various people, all of them. I think I will let the answer stand."

On the same page the witness said:

"A. I told them that the firm as it stood today, as the contracts were signed up, would not be permitted to go ahead and do business as a firm, so far as the New York Exchange was concerned, and that I had to reorganize this firm, and that I had asked Mr. Hecht and Mr. Finn to act as special partners for all the others, if they were willing to contribute the same amount to that fund.

Q. And what, if anything, did they say to that, and mention the name of the person who said it, please?

A. That they were satisfied with Mr. Hecht and Mr. Finn as their representatives."

On cross-examination by Mr. Platt the witness testified that after his receipt of the telegram from the New York Stock Exchange he communicated in substance the contents of that telegram to each of the men who had signed the April 2nd agreement and to each of the persons who had acted as attorneys for any of those men in connection with the negotiations, and that neither in any of the conferences that he had with any of the men who had signed the April 2nd agreement as special partners, nor with any of the attorneys who represented them, was there ever given any reason for the difference between the contract of April 2nd and the contracts of

June 30th other than the receipt of the telegram from the New York Stock Exchange and its communication to his associates. (Rec., 496)

All the respondents, including the Studebakers, assigned their claims against the Von Frantzius estate to Marcuse, a necessary preliminary. (Rec., 473)

All the respondents, or their attorneys, met on June 30th in the brokerage office and there handed in their checks which were at once endorsed and handed over to Marcuse. (Rec., 488-9.)

The respondents other than Marcuse likewise testified that the rule of the New York Stock Exchange was the only reason for changing the form of the partnership articles.

Finn, one of the respondents, testified that he was told by Marcuse that the New York Stock Exchange "would not permit as many special partners as there was originally intended, and on that account they asked me if I would act as a special partner; that Mr. Hecht—I was told at the time that Mr. Hecht was willing to do so, and that the other special partners would enter into an arrangement through what would be known as the Finn-Hecht Trust, which would bind them to us in the same manner as if they would be special partners. That was my understanding at the time." (Rec., 257.)

And further (Rec., 688):

"Q. let me ask you, what is your recollection as to the reason why this document, a copy of which I am calling to your attention with the last page indicating that the signatures were torn off, why wasn't that allowed to stand as the final agreement between the partners?

A. The way I understand it was because the New York Stock Exchange notified—we were notified by the New York Stock Exchange that only two limited partners would be permitted, and Mr. Hecht said

he was willing and, after a great deal of persuasion, I finally, unfortunately, decided to sign.

Q. Was there any other reason why Mr. Hoffman and Mr. Regensteiner and Zuncker and Vette weren't in there as limited partners just as you and Hecht were?

A. None whatever.

Q. Except that rule of the New York Stock Exchange?

A. None whatever, that is the only reason."

Zuncker, one of the respondents, testified (Rec., 379-80) that the reason the agreement of April 2nd did not go through was on account of the rule of the New York Stock Exchange, and that he could not remember any other reason why the agreement of April 2nd was not carried out.

Regensteiner, one of the respondents, testified (Rec., 428) that he understood that the rule of the New York Stock Exchange prevented the respondents from becoming partners openly, and "it was agreed that Mr. Finn and Mr. Hecht would be the special partners," in the articles of June 30, but that he did not understand that Hecht and Finn thereby acquired any advantage over him.

"Q. Am I correct in my understanding that you understood that their names were used in that connection instead of all your names being used, because the New York Stock Exchange rules wouldn't let all your names be used?

A. I think that was the understanding. * * *

Q. That they were picked to represent the rest of you men, including themselves, because the rule would not permit all of you to have your names appear, is that true?

A. That is my recollection." (Rec., 428)

"Q. That those two men stood there in a representative capacity for themselves and you and Hoffman and Vette and Zuncker?

A. That is the way I understood it.

Q. That is the way you understood it?

A. Yes, yes." (Rec., 429.)

Hoffman testified that he recollected that the rule of the New York Stock Exchange was one of the reasons for changing the partnership articles and he thought there were others but could not recall what any of the others were. (Rec., 683.)

He further testified (Rec., 683):

"It was our desire to become limited partners, if that served the purpose of recovering our claim against the Von Frantzius estate, yes."

Hoffman, who represented the Studebakers, testified that the Studebakers had been customers of the Von Frantzius firm and said (Rec., 674):

"The idea that was promulgated by Mr. Marcuse was that if he could take over the assets of Von Frantzius and develop the business based on those assets, he could make a paying business out of it, a brokerage business, and in that way make enough money to pay off the claims against the Von Frantzius Estate in full. We were interested in having our claim paid in full, and, therefore, we were interested in Mr. Marcuse's suggestion. The result of those negotiations was the Hecht-Finn Trust; in other words, a trust under which the special partners, with Mr. Marcuse and Mr. Morris, should pay—should divide or should pay certain sums to certificate holders under that trust.

Q. Now, you mean when you say special partners—

A. Messrs. Hecht and Finn."

"Q. Studebaker Brothers, what was their interest?

A. The protection of their claim against the Von Frantzius estate. Possibly they would make it in full. (Rec., 675.)"

"Q. I want you to tell me whether or not you then understand that Hecht and Finn were in any different relationship, or had any different responsi-

bility, than you and Regensteiner and Vette and Zuncker had under this agreement which finally went into effect.

A. My understanding was that *their liability would not be any different.*" (Rec., 687.)

Counsel for two of the respondents, Finn and Hecht, insisted in the Court of Appeals that the agreement signed June 30th carried out with slight alteration the original plan of April 2nd. The testimony of Finn was taken and bears out that contention. Hecht was sick at the time of the hearing and did not testify but his counsel insisted in the Court of Appeals that one general plan covered the agreement signed on April 2nd and June 30th.

Some of the other respondents offered some oral testimony claiming that there was a complete abandonment of the partnership contemplated by the articles signed April 2nd, and that the agreement of June 30th brought about a scheme entirely new and without any relation to the plan existing on April 2nd.

The two Studebakers, respondents, did not testify but their counsel, Mr. Buckingham, testified (Rec., 552, et. seq.) that he told Stein, the attorney for Marcuse, that he was opposed to any partnership, general or limited, and insisted that they would only put in their \$50,000 upon some trust agreement; that he revised the trust agreement called the Hecht-Finn agreement, that he put into it that the Studebakers were not to be considered partners, and that he approved the Hecht-Finn agreement as drawn.

Robertson, attorney for Vette and Zuncker, state that he heard Buckingham make the aforesaid statement about the Studebakers, and Hoffman, of Buckingham's office, and Grollman, attorney for Regensteiner, also testified to the same effect as Robertson.

One of the strongest proofs in the record that all these respondents never wavered from April 1st until after June 30th in their intention to form a limited partnership and to be all actually or by representation members of the partnership appears in exhibits marked "Hecht Exhibits 2, 3, 4 and 5" appearing on pages 665 to 670 of the record.

Hecht Exhibit 3 dated March 28, 1917, between Marcuse and Zuncker, and evidently made in anticipation of signing the partnership articles of April 2nd, recites that whereas Zuncker has agreed to be a special partner in Marcuse & Co., Marcuse agrees that at the expiration of one year from the partnership agreement he will, upon request of Zuncker, take the investment off Zuncker's hands and return him his \$25,000 in cash together with interest and a certain amount of profits; and further that after the termination of the partnership then to be formed (it was limited to five years) if Marcuse continued in the brokerage business and Zuncker so desired, he might invest a like sum of \$25,000 in any future brokerage firm carried on by Marcuse.

Hecht Exhibit 4 (Rec., 667) dated June 30th. between the same parties recites that whereas a partnership had just been formed and Hecht and Finn had executed a certain declaration of trust whereby they covenanted and agreed

"to hold their interest as said special partners in trust ratably for the holders of certain trust certificates, according to the terms of said declaration of trust,"

and Zuncker had agreed to put \$25,000 into the trust, Marcuse agreed that after April 1, 1918, upon Zuncker's request, he would repay to Zuncker the \$25,000 together with interest and certain profits and would "indemnify

and save harmless Zuncker against any and all *liability* on account of any *obligations of Marcuse & Company.*" and Marcuse agreed that after the termination of the partnership then entered into if Marcuse continued in the brokerage business, Zuncker should have the option of contributing \$25,000 to the future firm and should share in its profits. This document puts the articles signed June 30th on exactly the same footing as those signed on April 2nd.

Exhibit 2 (Rec., 665) is an agreement dated March 28, 1917, between Marcuse and Vette, is similar to the agreement made by Marcus with Juncker on that date and was evidently made in contemplation of the partnership agreement signed on April 2nd.

Exhibit 5 (Rec., 668) is an agreement dated July 1st (changed to June 30th) 1917, between Marcuse and Vette similar to Exhibit 4, and evidently was made in connection with the partnership articles which were signed on June 30th.

Nothing could more conclusively show than do these four exhibits that the respondents named were to have the same relation to the firm created by the partnership articles signed June 30th as they had by the articles of partnership signed April 2nd. It would be hard to imagine a declaration made for the very purpose that would show more conclusively that all parties intended that these respondents should have the same relation to the enterprise under the articles signed June 30th that they would have had under the articles signed April 2nd, if the latter had been carried into operation.

The articles signed April 2nd, with the accompanying documents showing the additional privileges to be given respondents by Marcuse in connection with future business, and the articles signed June 30th with like accom-

panying documents and with the Hecht-Finn Trust agreement restoring to all the respondents, other than Hecht and Finn, all the rights they had under the articles signed April 2nd, show conclusively that the relations of all the respondents to Marcuse & Company were to be the same under the articles signed on April 2nd and on June 30th. Any oral testimony in support of such position seems superfluous. Any oral testimony in opposition to such position can have little weight. The documents referred to leave no place for oral testimony.

The signatures of all the respondents to the contract signed on April 2nd appear mutilated (Rec., 275), and this was shown, by oral testimony, to have been done about July 11th *after* the second partnership agreement had been signed on June 30th. In other words, the continuity of the whole transaction is shown by the fact that the signatures to the first contract were not canceled until the second contract had been signed.

The strongest evidence, however, that the two partnership agreements were made to carry out a single purpose appears from a comparison of them. The purpose is exactly the same. We can also say that the parties were, in substance, the same. Morris and Marcuse with all the respondents were parties to the first agreement; Morris and Marcuse with Hecht and Finn representing themselves and the rest of the respondents, were the parties to the second agreement. Under the first agreement the contributions of the seven respondents aggregated \$190,000; under the second agreement the contributions of Hecht and Finn aggregated exactly the same amount. The other provisions of the second partnership agreement relating to the contributions of Marcuse and Morris; payment to the partners of 6 per cent on their investment; segregation of 25 per cent of the profits to pay the creditors of Von Frantzius; the division of the

net profits between all the partners; sharing in losses; the provisions concerning the keeping of books; access thereto; statements, trial balances; declaring dividends; the appointment of auditors; the dissolution of partnership on the certificate of auditors; that the death of none of the partners except Marcuse should work a dissolution of the partnership and in case of liquidation a liquidator be appointed by the special partners, or on their failing so to do the Chicago Title & Trust Co. to liquidate; are all exactly the same as in the first agreement. The differences are only such as were necessitated by reducing the special partners from seven to two.

Another document, however, was necessary in order to evidence the rights of respondents, other than Hecht and Finn, who were in fact contributing the major part of the new firm's capital. This led to the preparation and execution contemporaneously with the second partnership agreement of the third important document.

The Hecht-Finn Agreement.

The third of the principal documents to be considered in this case, the Hecht-Finn Trust, so called, confirms the position we have taken. It is not a trust at all; it was not intended to be a trust. It is, if anything, a declaration of distrust. Under the articles signed April 2nd there would be paid directly to the limited partners their dividends from the firm; they had the right of inspection of books and the appointment of auditors, and the right to dissolve the partnership and wind up its affairs if the auditors reported to them that things were not being carried on properly. It was impossible to put these provisions in the articles signed June 30th, for such provisions would have disclosed at once to the New York Stock Exchange that there were more than two lim-

ited partners in the firm. Under the articles signed June 30th considered alone, Hecht and Finn, although contributing less than one-third of the capital supplied by limited partners, would have a right to draw all dividends and all distribution of capital. They alone would have had the right to inspect the books, appoint auditors and if necessary wind up the partnership.

The other respondents were evidently unwilling to trust Hecht and Finn with these powers and the right to draw all dividends and then distribute them to the other respondents. Therefore, on account of that distrust the Hecht-Finn agreement was made. It provides that all distributions of dividends or capital, including those going to Hecht and Finn, should be paid to the Chicago Title & Trust Company, and by it disbursed to the respondents in proportion to their contributions to the firm.

Its purpose was to restore to respondents (other than Hecht and Finn) all the rights and privileges they would have had under the first articles had it not been necessary to revise them. It accomplished that purpose. It restored every right, duty and liability omitted from the second articles in the very phraseology of the first articles.

It will be impossible for respondents to point out a single substantial right that the special partners had under the first articles, that they did not have under the second articles, supplemented by the Hecht-Finn agreement, the latter being consented to by Marcuse and Morris.

The checks for contributions made by the respondents other than Hecht and Finn were made payable to Hecht and Finn, but in the presence of the other contributors were immediately endorsed over to Marcuse & Company.

Hecht and Finn never had any power over any income or fund; they were not to collect dividends or receive back the limited partnership capital upon dissolution; they were not to have any powers whatsoever in connection with the firm that the others did not have; they were not to receive or disburse any money. In fact, there was not given to them under the Hecht-Finn agreement a single trust power over either principal, interest or dividends.

All talk concerning trust and trusts, all citations regarding trusts, all discussion of relative rights of trustees and *cestui que trust* are as far as possible from being in point or applicable to the relation of these seven special partners. Hecht and Finn were the *representatives* of petitioners in this enterprise, but not trustees.

Under these circumstances with all these matters before it, the District Court held as follows (Rec., 689):

"The Court: I am prepared to announce a conclusion in this matter that has been submitted, not in the form, considering its highly important and interesting nature, I would like to make it in. However, it is more important that the conclusion should be announced than it is for a district judge to write a long and labored opinion.

The conclusion is that the so-called 'special partners' are all general partners; that these so-called 'special partners,' selected,—all of them selected Hecht and Finn as the agents for the operation of the special partnership by and through Hecht and Finn; that Hecht and Finn, in fact, were Hecht and Finn, Vette, * * * Regensteiner, the Hecht-Finn Trust, the Studebaker Trust as Clement and George Studebaker; that that is what Hecht-Finn were. They were all of these people; and that under the laws of the State of Illinois that thing was not a special partnership, but it was, by the law of the State of Illinois, a general,—member of a general partnership, by reason of the failure to comply with the Illinois statute specifying the steps, and prescribing the route to be taken to constitute a limited

partnership, which, as I have announced before, it was my view had to be obeyed to accomplish that end, but which in this case was not done in any essential particular."

In referring to this point, the Court of Appeals in the ruling opinion said:

"There was evidence from which the District Court could have reached this conclusion, and doubtless it did so conclude, and such conclusion of fact, reached upon contradictory evidence, we may not disturb in this proceeding to review and revise as to the law."

In the dissenting opinion, referring to the petition to review and revise, it is said:

"Only questions of law are therefore presented. *In re Hoyne, Bankrupt* (C. C. A.) 277 Fed. 668. On this record we can consider but one question: Is there any evidence to support the conclusion of the District Judge?

The District Judge failed to make specific findings of fact, but we must assume that such findings as were essential or might be necessary to support his conclusions were by him found in favor of respondents. His conclusion that petitioners were general partners makes such a position unavoidable. * * * If there is any evidence in the record to support the position of the respondents, we must accept it as established. *In re Hoyne, Bankrupt, supra*. Nor are respondents limited upon this inquiry to direct evidence. Their position may find support in the inferences fairly deducible from the established facts." (281 Fed. 941.)

It is submitted that two of the respondents, Hecht and Finn, joined the partnership created by the articles signed June 30th. Upon the above state of the record, we think it indisputable that the other five respondents, Vette, Zuncker, Regensteiner, and the two Studebakers (represented by Hoffman) bear the same relation to that partnership as did Hecht and Finn who represented the others.

We have above discussed at length the relations of these parties to the partnership because it was strenuously insisted, both in the record and in the briefs filed in opposition to the petition for *certiorari*, that of the respondents, only Hecht and Finn became partners, and that the so-called Hecht-Finn agreement instead of joining them more firmly to the partnership, rose as a barrier to keep them out of the partnership and leave them free from liabilities that Hecht and Finn incurred.

The Court of Appeals in both its opinions treated all the respondents as incurring the same liability and as being all partners under the agreement signed June 30th, but the controlling opinion allows them to escape liability because of two or three provisions of the Illinois Uniform Partnership Acts, which did not go into force until July 1st.

II.

THE ATTEMPT TO FORM A LIMITED PARTNERSHIP UNDER THE ILLINOIS ACT OF 1874 FAILED, AND NO LIMITED PARTNERSHIP WAS EVER FORMED.

All proceedings for the formation of this limited partnership were taken under the Illinois limited partnership law of 1874, which permitted the formation of a limited partnership to carry on a brokerage business if certain required steps were taken, particularly the making and acknowledging of a statement or certificate by all the partners showing the names of all special partners or persons interested in the firm, the amount of contribution by each special partner and that all such contributions were actually paid in, and the *filing of such certificate* in the office of the county clerk of the county in which was the principal place of business of the proposed firm.

Section 8 of that Limited Partnership Act is:

“SECTION 8. No such partnership shall be deemed to have been formed *until such certificate*, acknowledgment and affidavit *shall have been filed* as above directed; and if *any false statement* shall be made in such certificate or affidavit, *all* the persons interested in such partnership shall be liable for all the engagements thereof, *as general partners.*”

In 1917 Illinois adopted the Uniform Partnership Act and the Uniform Limited Partnership Act, changing materially the partnership law of Illinois. The new acts took effect on July 1, 1917, the old act expiring with June 30th.

The certificate referred to above, required by the Act of 1874, was not recorded until July 2nd after the act under which it was recorded had been repealed. No attempt was ever made to comply with the new limited partnership act, and it was practically conceded by counsel for respondents, and it is stated in the ruling opinion of the Court of Appeals that this partnership was not completely formed as a limited partnership under either the 1874 or 1917 act.

It is our position that no special or limited partnership was formed under the Illinois Act of 1874 because:

(a) The Act of 1874 under which it was attempted to form the limited partnership and the only Illinois act under which a limited partnership to conduct a brokerage business could be formed, was repealed prior to the filing of the necessary certificate.

(b) There were intentional false statements of material matters made in the certificate which was prepared and filed.

(c) No limited partnership for *brokerage* purposes could be formed under the Illinois Uniform Limited Partnership Act which took effect July 1, 1917.

(a) The Act of 1874 was repealed prior to the filing of the necessary certificate.

The District Court found, and both opinions of the Court of Appeals proceed on the assumption that the effort to form a limited partnership failed. No other conclusion could have been reached.

An attempt was made to form the limited partnership under the act of 1874. The statutory certificate which was signed and filed, recited (Rec., 461):

"This is to certify that the undersigned, Ben Marcuse, L. H. Morris, Frank A. Hecht and Joseph M. Finn, being desirous of forming a limited partnership *under provisions* of an Act of the General Assembly of State of Illinois entitled, 'An Act to Revise the Law in Relation to Limited Partnerships,' approved March 18, 1874, in force July 1, 1874, do hereby certify," etc.

This certificate was filed July 2, 1917, and only purported to give the limited data required by the act of 1874, not the much fuller disclosure required by the act of 1917. The certificate was *filed in the office of the county clerk* as required by the act of 1874, not *recorded in the office of the county recorder* as required by the act of 1917.

On June 30, 1917, the act of 1874 expired, except as to limited partnerships then in existence. This limited partnership had not been completed prior to that repeal.

The certificate, acknowledgment and affidavit were not filed until July 2nd. The final and vital element, therefore, in forming a limited partnership under the act of 1874 did not take place until that act had been repealed.

(b) Had the certificate been filed in time under the Act of 1874, respondents would still have been liable as general partners because of the false statements in the certificate and the failure of some of the limited partners to sign that certificate.

The act of 1874 provides (Sec. 4):

"The persons desirous of forming such partnership shall make and *severally* sign a certificate which shall contain 1, * * * ; 2, * * * ; 3, *the names of the general and special partners* therein, distinguishing which are general and which are special partners, and their respective places of residence; 4. The amount of capital stock which *each special partner* shall have contributed to the common stock."

The essential feature of this certificate, designed for the information and protection of creditors, is that *the names* of the special partners shall be disclosed, the amount of the *contribution of each special partner be disclosed* and that this certificate shall be signed and acknowledged *by each* of the special partners. To avoid the rule of the New York Stock Exchange, but with the effect of concealing this essential information from creditors, the certificate filed did not disclose the contributions to the partnership fund made by Vette, Zuncker, Regensteiner and the Studebakers or their connection with the organization. It was not signed by them.

These men were all partners and every right secured to all the special partners under the first partnership agreement was preserved to them under the second and third agreements. They made the same contributions to the capital, were entitled to the same proportion of the profits, bore the same proportion of losses, and had the same right to inspect the books, appoint auditors and

dissolve the partnership as was given them in the first document.

The so-called Hecht-Finn trust, with the articles signed June 30th attached as an exhibit, simply emphasizes the fact that the firm which finally engaged in business was the firm arranged for in February, sought to be formed in April and finally formed in June and July.

No money was paid by any respondent to Hecht and Finn. On Saturday morning, June 30th, the contributors in person or by their counsel met in the office of Marcuse & Co. and handed in checks for the amount of their respective contributions. (Rec., 340, *et seq.*, 245-248.) They laid their checks on the table. The checks of Hecht and Finn were for their contributions as provided by the first partnership agreement. The checks of the other contributors were for the amount of their contributions according to the first agreement. The latter checks were drawn to the order of Hecht and Finn but were at once endorsed by them and laid with the other checks on the table. (Rec., 247-250, 341.)

Zuncker concedes (Rec., 384) that he paid \$25,000 into the Hecht-Finn trust and supposed it went to Marcuse & Company. Marcuse testified that he talked with the two Studebakers and that they told him that they would put \$50,000 into the enterprise and referred him to Scott Brown or Hoffman for details. On the 30th of June, Hoffman (for the Studebakers) was present with the \$50,000 check. Robertson was present as the representative of Vette and Zuncker and said that he would not have delivered their \$55,000 into the fund unless all of the \$190,000 went in at the same time. (Rec., 627.)

The money passed directly from respondents to the partnership account.

Therefore, on June 30th, each of the respondents,

present in person or by attorney at the meeting when the certificate was made, knew that that certificate was purposely made false in two most important particulars—the names of the special partners and the amounts contributed by them; and it was not “*severally*” signed by each of the special partners.

On December 1, 1918, Marcuse & Co. declared an extra or special dividend of 4 per cent. Checks for this dividend were mailed by Marcuse & Co. direct to all the special partners or credited to their trading accounts and so accepted by them, with the exception of the Studebakers, who returned their checks, requesting that they be made payable to the Chicago Title & Trust Co., which was done. (Rec., 523.)

The District Court found and the Court of Appeals opinions proceed on the assumption that the purpose of making the change in the form of the original partnership agreement was to avoid the rule of the New York Stock Exchange. Section 8 of the 1874 act provides:

“and if any false statement shall be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof *as general partners*.”

This is an Illinois statute and the Illinois courts have construed it that failure to give correct information required by the act renders all parties liable *as general partners*.

In *Cummings v. Hayes*, 100 Ill. App. 347, the court held all the members of an attempted limited partnership liable as general partners because one of them had signed the statutory certificate by an attorney, and said (pp. 353-4):

“The provision of the statute authorizing limited partnerships must be substantially complied with, or those who associated under it will be liable as general partners. *Henkel v. Heyman*, 91 Ill. 96.

Such portions of the statute as look to the protection of persons dealing with the firm, are, in favor of the public, to be liberally construed, and must be strictly observed by the partners. *Smith v. Argall*, 6 Hill, 479; *Argall v. Smith*, 3 Denio, 435; *Haggerty v. Foster*, 103 Mass. 17-19; *Maloney v. Bruce*, 94 Pa. State, 249; *Lachaise v. Marks*, 4 E. D. Smith, 610-626; *Fox v. Graham*, *Michigan Nisi Prius Cases*, 90; *Durant v. Abendroth*, 69 N. Y. 148.

What portions of the statutes are designed for the protection of those who may deal with the firm? Manifestly, the statements of capital contributed by the special partners, the duration of the partnership, *the names of the parties, and certainty as to their assent thereto.*"

"* * * The certificate filed in the office of the clerk of the county, to be by him recorded in a book and kept subject to inspection by all persons, *must be such that therefrom, and without outside inquiry or examination, it can be determined with certainty whom the parties forming such limited partnership are, and that each of them has joined therein and assented thereto.*"

In 20 Ruling Case Law, p. 1065, it is said:

"And good faith and an honest intention to comply with the statute will not protect the special partner nor need a creditor prove that he has been injured by a failure to comply with the statute."

Buckley v. Lord et al. 24 How. Prac. 455, is a well considered case directly in point. In that case, Lord, Brown and Marks agreed to form a limited partnership in which Lord and Brown were to be general partners, and Marks a limited partner. Marks was to contribute \$20,000 in cash. As a matter of fact, Bramhall contributed \$8,000 of the \$20,000 paid in by Marks and had an agreement with him whereby Marks was to pay Bramhall two-fifths of all profits and on dissolution two-fifths of the principal received by Marks from the partnership. The

general partners knew of this arrangement and the partnership article provided that Bramhall because of the interest he had manifested in the welfare might at all times examine into its business affairs. The certificate required to be filed said nothing about Bramhall, and stated that the \$20,000 was furnished by Marks. The court held both Marks and Bramhall general partners, and said:

“He sought to secure the right and all the benefit of a special partner without becoming one, and thereby *made himself a general partner*. He is made so by the operation of the statute, which declares that all persons interested in the partnership shall be liable as general partners if any false statement is made in the certificate or affidavit by which the limited copartnership is formed.”

The *Buckley* case is strictly analogous to the case at bar, and the principle of it is emphasized instead of discredited by *Crehan v. Megargel*, 234 N. Y. 67, although the latter case was cited by our opponents in reply to the petition for a writ of certiorari. A careful consideration of the *Crehan* case shows, however, that while in that case outside parties contributed part of the special capital through a trustee, they were to have no right to supervise or take part in the affairs of the partnership. They were expressly excluded from any control over the partnership, or over the special funds put into it, and the court reached the conclusion that the outside contributors were not liable, largely on account of this express exclusion from taking part in the management, and stated that it was not in any way criticizing or departing from the *Buckley* case. There are one or two dictums in the *Crehan* case, out of which much was attempted to be made, but we insist that a careful consideration of the two cases shows that the *Buckley* case is

exactly analogous to the case at bar, and the *Crehan* case is not in point.

In the *Buckley* case the rights of a special partner were reserved to Bramhall; in the *Crehan* case they were not reserved to the contributors.

The rights of a special partner are to share in the profits and pay his proportion of the losses; to examine into the partnership affairs; to require an accounting; to bring suit under certain conditions to dissolve the partnership or to protect his rights. (Hurd's Ill. Rev. Stat. 1915-1916, Ch. 84, Secs. 15, 19 and 20.)

The Hecht-Finn agreement provides that profits and losses are to be borne in proportion to the respondents' contributions; that respondents shall have access to the books of account and be furnished with monthly reports, an annual inventory and monthly balance sheets; that they may appoint auditors for the firm, and that they may, under certain conditions, bring suit to dissolve the partnership.

Therefore, every statutory and legal right (and more) of a special partner was given to each respondent.

So far as we can find, all special partnership statutes, and especially the Uniform Limited Partnership Act, have similar provisions requiring that the certificate and affidavit to be filed shall give the *names* of the special partners and the *amount* each contributes. The Uniform Act requires also the *residence* of the special partners be disclosed. If only the amount is material, why call for the names? If names and amounts are required, they surely must be the true names and the true amounts.

There is ample reason (if reason is needed) why true names and amounts are required. If, for instance, the certificate is false as to the amount, the creditors are entitled to know who are the special partners and to

whom they may resort for payment. They are entitled to this information *on the face of the papers* and should not be required to seek it elsewhere.

Limited partners have all the advantage of the limited liability of a corporate organization without any of the customary statutory restrictions on corporations and corporate powers. They should, therefore, in good faith, and without evasion, give the information required by the statute in the recorded certificate.

(c) No limited partnership for brokerage purposes could be formed under the Illinois Uniform Limited Partnership Act, which took effect July 1, 1917.

Section 3 of that act is:

“A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking, insurance, brokerage and the operation of railroads.”

This section is too plain to call for construction. It is in line with the Illinois statutes and the statutes of other states, most of which provide separate statutes for banking, insurance and the operation of railroads.

The laws of Illinois do not permit the incorporation of a company to carry on a brokerage business. They forbid the creation of a limited firm for that purpose. Such a business calls for great trust on the part of those dealing with a brokerage house. It is akin to banking. Illinois evidently resolved that any person engaging in a brokerage business should do so at the risk of his entire fortune. He and not his customers should suffer.

Such a policy on the part of the state is abundantly justified by the results in the case at bar. The capital put into the business was \$190,000 from the special partners, \$10,000 from Morris, \$60,000 from Marcuse, a New York Stock Exchange membership worth \$68,000

and a Chicago Stock Exchange membership worth \$2,000, or a total of \$330,000. In three months, on September 30, 1917, it reached a business involving \$4,272,830.04. (Rec., 510.)

From a tentative report of the receiver it appears that there are about 700 creditors and that, according to the Marcuse books, liabilities exceeded assets by about \$1,729,640.73. (Rec., 716.) This report lists as assets \$853,313.96 due from customers on unsecured accounts which item the receiver states is of doubtful value. Excluding this item, and allowing for the usual shrinkage in assets and increase in liabilities there is probably a deficit considerably in excess of \$2,500,000. This indicates a loss at about the rate of \$76,000 a month. At this rate, in four months, the firm's capital was gone and it was conducting business on its depositors' money. The receiver's tentative report shows not only hopeless insolvency but that only a small portion of the securities supposedly purchased and held for customers were on hand at the time of the appointment of the receiver, and that the same was true, but to a less extent, of the securities received from customers as margin deposits. (Rec., 716.)

Is it any wonder that the Illinois Uniform Limited Partnership Act refuses to permit a brokerage business to be carried on by a limited partnership and that Illinois refuses to permit a corporation to be formed to carry on such a business, and thus requires unlimited personal liability on the part of those engaging in such business?

The new Illinois Uniform Limited Partnership Act provides for limited partnerships, existing under the 1874 Act, qualifying under the new Uniform Act by filing new certificates, affidavits, statements, etc. That provision, however, cannot relate to brokerage partner-

ships for they cannot be organized under the new act. However, no attempt was made by respondents to comply with the new limited Partnership Act.

If the above situation was in any way affected by the new legislation, it was to leave the firm a general partnership under the new acts. This partnership under either the Act of 1874 or of 1917 was a general partnership.

Respondents, by their own deliberate acts, rendered themselves liable as general partners.

There is little dispute up to the present point between us and the ruling opinion of the Court of Appeals, for as before said, that opinion simply sustains a defense of confession and avoidance.

III.

SECTION 11 OF THE UNIFORM LIMITED PARTNERSHIP ACT HAS NO APPLICATION.

As there is no serious contention in the record that a limited partnership was formed either under the Act of 1874, or under the Uniform Limited Partnership Act of Illinois, and as no attempt was made to conform in any way to the new act and because it expressly provides that no brokerage business can be carried on under it, the defense is largely a confession and avoidance based on two theories:

First, that respondents are freed from partnership liability by Section 11 of the new Illinois limited act, which provides that where partners thereunder "erroneously believe" that they are members of a limited partnership, and upon learning they are not limited partners, promptly renounce their interest in the profits of the

business, they shall not be held liable as general partners; and,

Second, that as respondents did not become limited partners under the old act and did not become limited partners under the new limited act, and did not intend to be general partners, therefore, under Sections 6 and 7 of the Illinois Uniform General Partnership Act, they were not partners at all and cannot be held liable as partners in any way or to any extent.

The principal part of the controlling opinion of the Court of Appeals is based on Section 11 of the Illinois Uniform Limited Partnership Act. On that section respondents rested their first and principal defense. That section is:

“A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.”

It was principally on this section that the Court of Appeals freed all of the respondents from liability. The construction put upon it by that court is most important, and because it is a strained construction will probably not be followed by the state courts.

The evidence showed that the partnership continued active nearly three years, became insolvent and was thrown into bankruptcy; that shortly thereafter Hecht and Finn tendered or paid to the receiver \$46,000, claiming that to be ~~the~~ profits or dividends that had been distributed to all seven of respondents and claimed im-

munity under Section 11. It was also shown (Rec., 658-661) that the other five respondents declined to participate in the tender, disclaimed any necessity of returning profits and refused to allow Hecht and Finn to tender the return of profits or to make a renunciation of interest *in their name or on their behalf*. They claimed they were not special partners. This is also stated in both opinions of the Court of Appeals.

We insist that the limited partnership was sought to be created under the old law; that nothing was ever done under the new law; that a limited partnership for brokerage could not act under the new law; that Section 11 of the new act did not apply to a partnership formed under the old act and especially not to a brokerage business, as the new act excluded that business, and that in any event Section 30 of the Uniform Limited Partnership Act expressly provided that until a limited partnership under any other act complied with the provisions of the new act, it should be governed entirely by the provisions of the old act.

Section 11 is new. It does not occur in any prior limited partnership act. Was it the intention that this section should apply to limited partnerships then in existence, formed under prior statute? Especially was it intended to apply to limited partnerships formed under prior acts to conduct a business expressly prohibited by the new limited act? Or was it intended to apply only to partnerships authorized and formed under the act in which it appears?

The heading of the first section of the Illinois Uniform Limited Partnership Act is "What Constitutes Limited Partnership—Liabilities." That section then continues:

"A limited partnership is a partnership formed by two or more persons under the provisions of Section 2." * * *

Section 2 referred to must be Section 2 of that act. When "limited partnership" is subsequently used it is used, without qualification, in the sense defined by the act.

In the light of this definition, we turn to Section 11. The first part of it is:

"A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not," etc.

What is meant here by "limited partnership"? Obviously a limited partnership *as previously defined*, that is, a limited partnership formed under Section 2 of that act. To hold otherwise is to ignore the definition of "limited partnership," in the act itself.

If the words "limited partnership" and "limited partner" as used in Section 11, were not intended to refer only to limited partnerships and a limited partner in a limited partnership formed under the provisions of that statute, then these words, when used without qualification in other sections of the Limited Partnership Act may likewise be construed as applicable to limited partnerships and limited partners under the Act of 1874.

For instance, Section 3 of the Uniform Limited Partnership Act provides "A limited partnership may carry on any business which a partnership without limited partners may carry on except banking, insurance, brokerage and the operation of railroads."

If "limited partnership" as used in section 11 does not refer only to limited partnerships formed under the Uniform Act, then likewise "limited partnership" as used in section 3 does not refer only to limited partnerships formed under that act, and section 3 must likewise be construed as an amendment of the prior act and to

prohibit limited partnerships formed under the prior act from carrying on a brokerage business.

We can go through the Uniform Limited Partnership Act, section after section and in almost every section the words "limited partner" or "limited partnership" are used without further qualification, and if when used in Section 11 they apply to limited partners and limited partnerships formed under the prior act, then in each other section of the Uniform Partnership Act those words must be construed also to apply to limited partnerships and limited partners formed under the prior act.

Instead, therefore, of the Uniform Partnership Act being a carefully constructed statute complete within itself, it must be construed only as an amendment to the prior statute and the prior statute interwoven with it in determining the rights and liabilities of limited partners.

As if to prevent any possible misconception of the Uniform Act being construed as merely an amendment to prior acts, the Uniform Act expressly covers the situation.

Section 30 of the Uniform Act is entitled: "Provisions for Existing Limited Partnership." Sections (1) and (2) are:

"(1) A limited partnership formed under any statute of this state prior to the adoption of this act, may become a limited partnership under this act by complying with the provisions of Section 2; provided the certificate sets forth, etc." * * *

"(2) A limited partnership formed under any statute of this state prior to the adoption of this act, until or unless it becomes a limited partnership under this act, shall continue to be governed by the provisions of an act entitled, 'An Act to revise the law in relation to limited partnerships,' approved March 18, 1874, in force July 1, 1874, except that

such partnerships shall not be renewed unless so provided in the original agreement."

In other words, the new act has certain substantial burdens that the old act did not have, for instance, much fuller disclosures. It has certain substantial benefits the old act did not give, for instance, section 11. Until any limited partnership formed under the old act assumes the burdens of the new act, *it continues to be governed by the provisions of the old act.*

Section 30 is very explicit on this point. It requires a certificate complying with the elaborate disclosures called for by section 2 of the new act and also a certificate of the firm's financial condition. It calls particularly for the amount of the original contribution of each limited partner. There is no pretense that any such steps were taken, and until then a limited partnership formed under a prior law "shall continue to be governed by the provisions of" the Act of 1874.

The construction given section 11 by the Court of Appeals entirely disregards or annuls section 30 and holds section 11 to be in effect an amendment to the old act, and that a partnership formed under the old act and which cannot bring itself under the new act or assume its *burdens*, may nevertheless have all the *benefits* of the new act. This construction is squarely opposed to the intention of the commissioners submitting and the legislatures enacting the Uniform Limited Partnership Act. If it stands it bids fair to work confusion. Instead of a carefully drafted substitute act, the Uniform Act will be but an amendment to prior acts, and the rights and liabilities of partners under prior acts must be determined by construing the former acts as if amended by the Uniform Acts.

It is clear that by section 30 the legislature intended to prevent the interweaving of the statutes and that each

statute should stand as a consistent whole; that limited partnerships formed under the prior act should, until they brought themselves under the Uniform Act, be governed *solely* by the prior act, and that after they brought themselves under the new act, they should be governed *solely* by that act. Of course, if a limited partnership had been formed, or attempted to be formed under the prior act for a purpose prohibited by the Uniform Act, it could never bring itself under the new act, but must continue to be governed solely by the provisions of the old act. And that act has no section 11.

It is also clear that the legislature did not intend, by section 11, to grant immunity to persons attempting, at any time, to form a limited partnership *for a purpose for which a limited partnership could not be formed* under the Act of 1917.

By expressly denying the right to organize as limited partners for brokerage purposes, the legislature impliedly required parties engaging in such a business to do so as general partners with unlimited liability.

Yet the controlling opinion of the Court of Appeals applies section 11 to a partnership *attempted* to be formed under the Act of 1874 to conduct a brokerage business, and gives to respondents, who for over two years from July 2, 1917, carried on a brokerage business in Chicago, finally ending in bankruptcy, all the immunities of limited partners, and more.

In the court below it was contended that the new act introduced into the law a new conception of limited partnerships, and that we now have a new creature of the law—limited partnerships—to which a new public policy is to apply. It probably was for that very reason that Illinois expressly excluded from such more liberal pol-

icy any partnership formed to conduct a brokerage business.

To apply section 11 to limited partnerships organized under the 1874 act, is to force into the new act a meaning the legislature expressly denied to it. It is extending the provisions of a lenient act to a business which could not be carried on under that act. It is evading the very purpose of the legislature in excluding brokerage houses from that act.

There is sound reason in the determination of Illinois refusing to allow a brokerage business to be carried on under the Uniform *Limited Partnership Act*. Every argument that the new limited partnership act created a new era in partnership but emphasizes the purpose and intention of the legislature that brokerage firms must not operate under that act, and the stronger such arguments are, the more certain it becomes that that act cannot be availed of to carry on a brokerage business.

Banking, insurance and brokerage have always been considered by the legislature of Illinois (and by legislatures generally) as differing from other business. There is good ground for such treatment. The trust the public necessarily places in banking, insurance and brokerage houses, the vast amounts of other peoples' money they handle, the duties they owe to protect and conserve that money, justify the law-making authority in refusing to allow such business to be carried on by a partnership with limited liability; and also justifies Illinois in refusing to allow banking or insurance business to be carried on by a corporation organized under the general incorporation act, in requiring double stockholders' liability in banking, and in refusing to allow a brokerage house to be incorporated at all.

Therefore, since July 1, 1917, no person is allowed in

Illinois to engage in brokerage business as a limited partner or as a stockholder. He must do so under the General Partnership Act, and place at the risk of that business his entire fortune.

Yet the Court of Appeals held:

1. That Section 11 of the Uniform Limited Partnership Act applies to partnerships formed under the prior act, and in fact, to partnerships that cannot be formed under the new act, and thereby respondents were relieved of all liability whatsoever.

2. That Section 7 of the Uniform *General Partnership Act* can be applied to firms attempted to be formed as *limited* partnerships but failing completely in that attempt, and then be so construed as to relieve the members from all liability, as either general or special partners.

3. That a brokerage house in Chicago formed as a partnership can do business for two or three years, invite deposits, squander funds, not make the investments for which funds were remitted, fail for a large amount, and still, under the two acts, be held to be no partnership at all, and that some at least of the partners go scot-free.

Under the Facts in This Case Respondents Could Have Had No Such "Erroneous Belief" That They Were Limited or Special Partners, as Is Contemplated in the Statute.

Nothing was done in this case in ignorance. All the partners interested in the venture knew just what was being done. They had all been traders on the stock exchange through the firm of Von Frantzius & Co. They were all experienced stock speculators. The whole venture was devised largely to recoup the losses that re-

spondents had made in the brokerage office of Von Frantzius & Co.

All the respondents knew of the attitude of the state toward brokerage concerns. They knew no corporation could have been for many years formed under the laws of Illinois to conduct such a business. They all knew the care and exactness with which the statute must be followed in perfecting a limited partnership.

They all knew that they had signed the partnership articles of April 2nd, in which they were each to contribute certain sums of money. They knew that a change had been made in the plan on account of a rule of the New York Stock Exchange. Each of them knew that on June 30th he contributed the exact amount that he was to contribute under the agreement signed on April 2nd. They knew on June 30th, when they either signed the articles of that date or the Hecht-Finn agreement, that they were doing wrong. They knew that the certificate presented and sworn to on June 30th, and filed on July 2nd stated that there were only two special partners when there were really seven. They knew that that false certificate stated that two special partners had contributed \$190,000 to the venture, while that amount had been contributed by all seven of them.

They knew on June 30th that the certificate with those false statements in it could not be made the basis of a limited partnership. They knew that ever since 1874 the law relating to such a partnership had provided that "if any false statements shall be made in such certificate or affidavit, all the persons *interested in such partnership* shall be liable for all the engagements thereof *as general partners.*" They knew that they were "interested in such partnership" for they had contributed money to it and had power under certain circumstances to wind it

up; they had a right of inspection of its books; they had a right to receive the profits, and they were bound to share the losses.

Under such circumstances the law will not allow them to say they "erroneously believed" that a fair, valid, honest limited partnership had been formed.

Moreover, "erroneously believing" does not apply to disregard or ignorance of an important provision of the statutes. There have been numerous cases in Illinois where corporations have been held to be partnerships because the incorporators neglected to file a proper certificate with the county recorder. This very question of filing a proper certificate in the case of a limited partnership has been before the Illinois courts of record a number of times. (*Cummings v. Hays, supra*, and other cases cited, on pp. 81-82, *post.*) Such flagrant acts of violation of law are not covered by the term "erroneously believing" in Section 11 of the new act.

Moreover, this partnership ran for two years and eight months and nothing was done by any of the respondents to correct what was wrong. The new limited partnership act had been firmly established and much business done under it, and still no such attempt was made by respondents. Their relationship of general partners continued during all that time and it was not until a week or two after the firm was thrown into bankruptcy that diligent counsel brought up Section 11 as a possible loophole of escape. Under these circumstances, respondents cannot claim the benefit of this clause concerning erroneous belief.

Respondents Did Not Renounce All Interest in the Firm or Return All Profits, and Cannot, in Any Event, Claim the Benefit of Section 11.

Even assuming that Section 11 of the new limited partnership act could be applied to limited partnerships formed under the Act of 1874 and which have not filed a new statement or otherwise sought to bring themselves under the provisions of the 1917 act, respondents cannot claim the benefit of Section 11 because they did not tender or return to the firm or its receiver a sufficient sum of money in attempting to renounce.

The testimony concerning the return of \$46,000 as the amount the respondents drew from the firm appears on pages 357 and 654 *et seq.* of the record. The partnership articles required all dividends from the business to be paid to the Chicago Title & Trust Company to be by it disbursed to respondents. On one occasion, however, a four per cent dividend was paid directly by the firm to respondents and by each of them retained as a dividend paid partners. Four per cent on \$190,000 capital contributed by respondents would be \$7,600. Money disbursed through the Chicago Title & Trust Company must have been \$38,400, these two sums making the \$46,000. Finn, a respondent, testified (Rec., 655) that he took into account "in computing this sum of \$46,000 not only the amount which had been paid through the Chicago Title and Trust Company, but this 4 per cent that had been paid directly to the parties."

The total amount paid respondents by the firm for dividends and for interest on principal contributed was \$43,700 as shown by page 351 of the record. Adding \$2,300 for interest on those payments makes \$46,000.

The articles of partnership (Rec., 22-3) provide that 6

per cent shall first be paid upon the capital contributed, and that out of the net profits there shall be next paid 25 per cent thereof to Marcuse, to be applied on the certificates of indebtedness issued by him to creditors of Von Frantzius, and it appears throughout the record and in the opinion of the Court of Appeals, that this payment of 25 per cent on those certificates was one of the main inducements to respondents to become interested in the firm. Page 357 of the record shows that semi-annual payments of interest were made on the capital contributed. Each of those interest payments to respondents aggregate \$5,700. It appears that this interest was regularly paid and that in addition thereto there was a 4 per cent dividend amounting to \$7,600 paid upon respondents's contributions in December, 1918. The payment shown on that page to have been made in December, 1919, consisted of \$5,700 of interest and a dividend of \$7,600, or \$13,300 in all.

As at least two dividends were paid on respondents' contributions, there must have been also paid the 25 per cent of net profits upon respondents' Von Frantzius certificates. \$15,200 were paid respondents *in dividends*, being 8 per cent thereon. There was therefore also paid 8 per cent dividends on the \$140,000 contributed by Marcuse and Morris, \$11,200, or a total of \$26,400 in dividends. This latter amount, however, was only 75 per cent of the net profits, for 25 per cent of those net profits had first to be paid to the Von Frantzius creditors. The net profits, therefore, of the partnership were at least \$35,200, of which one-quarter, or \$8,800, was paid on Von Frantzius certificates and the other three-quarters, or \$26,400, was paid as dividends. Respondents, therefore, must have received a large part of the \$8,800 paid on the Von Frantzius certificates.

The distribution of the earnings must have been about as follows:

Interest on respondents' contributions	\$28,500
Interest on contributions of Marcuse & Morris	21,000
Paid on the Von Frantzius certificates	8,800
Two dividends of 4 per cent each to respondents	15,200
Two dividends of 4 per cent each to Marcuse and Morris	11,200

The amount paid respondents consists of their \$28,500 of interest and \$15,200 of dividends, or \$43,700. Interest on this amount would bring it up to about the \$46,000 paid by Hecht and Finn.

Respondents were large creditors of Von Frantzius, probably the principal creditors. They must have received a large portion of the \$8,800. What became of their shares of that \$8,000? They did not return it to the firm or its receiver.

The partnership articles provide very specifically that the first profits all be paid upon the Von Frantzius certificates of indebtedness. This was not to pass through the Chicago Title and Trust Co. Respondents did not show the total amount of the Von Frantzius indebtedness. They probably received a large part of what was paid on it. They certainly received some of it. The burden was on them to show that they had returned to the firm *all* the profits they received, and to show this clearly. The \$46,000 they did return was only the dividends and interest they received and did not include what they received through the distribution on the Von Frantzius certificates.

It is therefore clear that respondents did not tender or repay to the bankrupt firm or to its receiver all the benefits they had derived from the partnership which Section 11 calls for. This is a conclusive answer on the facts to everything said in argument or by the Court of Ap-

peals in favor of applying Section 11 to respondents. It is sufficient in itself to justify the District Court in finding as a fact that the respondents had not brought themselves under the proviso of Section 11, and such a finding and determination by the District Court is binding in this proceeding.

Finally, under no circumstances is Section 11 available to Vette, Zuncker, Regensteiner and the Studebakers. Hecht and Finn tendered to the receiver in bankruptcy \$46,000, claiming that amount to be the aggregate of all received both by themselves and the other respondents from the firm. Hecht and Finn furnished the whole amount tendered. (Rec., 655.) The other respondents refused to allow or permit the tender to be made in their names. (Rec., 658-9.) They have to-day, each of them, in his pocket, every dollar he received from Marcuse & Co. by way of profits or otherwise. No one of them has "renounced" his interest in the partnership. They persistently declared they were not special partners and never had considered themselves as such under the second agreement. They maintain that position still in their pleadings, and therefore they could not *on their own theory* have "erroneously believed" that they were limited partners. They expressly declined to authorize Hecht and Finn to make a renunciation for them or in their name and have personally made no such renunciation. Without refunding profits received and without renouncing future interest in the profits, they claim the advantage of Section 11. This is a complete answer to all defenses founded on Section 11.

To Apply Section 11 to This Brokerage Concern Would be Highly Inequitable to Creditors.

If a partnership had been formed after July 1st for the purpose of banking and an attempt had been made so

to form it under this new limited partnership act, would anyone for an instant have thought that the firm so carrying on the banking business was a limited partnership and not a general partnership? In such a case would ignorance of the new law have supported a defense founded on "erroneous belief"? The very highest financial responsibility is required to protect people doing business with banking, brokerage and insurance institutions.

Yet controlling opinion holds that if, in spite of the prohibition of the statute, a limited partnership is formed to conduct a brokerage business, the partners may avoid liability under Section 11 of the limited partnership act. That opinion holds substantially that ignorance of material and important statutes, ignorance that the old statute has been repealed, ignorance that the uniform partnership acts have been adopted in Illinois, ignorance or disregard of the provisions and requirements of either the old or the new law, ignorance or disregard of many court decisions on general and limited partnerships, all may be excused under Section 11 and that such excuse may even cover the making of a false certificate as to who are the special partners and the several amounts they contributed. Violation of the law there results in immunity and manifest advantage to the violator. To accomplish this, the ruling opinion lifted Section 11 out of the Uniform Limited Partnership Act, applied it to an organization which could not have been formed under that act and allowed it to be used as a cloak under which respondents may escape liability, leaving the creditors to suffer.

Throughout the opinion the court seems to have been misled by the idea that it is not affirmatively shown that any person was prejudiced or injured by any concealment in this case, or that any person relied upon the lia-

bility of the concealed partners. Would this be a good answer to the small depositor of a savings bank which the promoters had attempted to organize under the limited partnership act? Certainly this reason does not apply to Hecht and Finn, for their certificate was on file, although informally, in the office of the county clerk. It was as much notice in that way as if the limited partnership had been properly formed.

Moreover, this point is not good on any principle of law. A claim that a person is not entitled to recover from *all* partners because he did not know the name of one partner or that that person was a partner, is no defense in the case of a general partner. There are many firms with only two persons appearing in the firm name that have eight or ten partners, and the public knows little about those not named, but they are all liable. The contention that only one who relied on the name of one of these partners can recover would do away with all the law ever written on the liability of an undisclosed principal, and would bring it about that a man whose name did not appear in the firm and who claimed that he was only a special partner could not be held liable. Such a doctrine would probably do away with the liability of one-half of the partners in our present commercial system. It would render unnecessary any law on limited partnership.

The conclusions arrived at by the Court of Appeals cut down the liability of partners and the remedies of creditors to an extent never before dreamed of. There is almost a license given for persons to associate themselves together in the banking or brokerage or insurance business in Illinois as a limited partnership, to make all they can out of it, and then having received the deposits and trust of many people, simply to say, when bankruptcy comes, that they "erroneously believed" they

were acting in compliance with the law and now that their attention has been called to their flagrant disregard of the statutes, they will return the profits they have made and go scot-free.

IV.

RESPONDENTS ARE GENERAL PARTNERS BOTH AT COMMON LAW AND UNDER THE UNIFORM GENERAL PARTNERSHIP ACT OF 1917. THE COURT ERRED IN HOLDING THAT NO PARTNERSHIP RELATION OF ANY KIND EXISTED. SECTIONS 6 AND 7 OF THE NEW GENERAL PARTNERSHIP ACT DO NOT SUPPORT THE COURT IN SO HOLDING.

The last part of the opinion of the Court of Appeals discusses what would result if Section 11 is not applicable and does not exonerate respondents. The majority opinion holds that even if Section 11 is not applicable the respondents are not liable as partners, and were not partners at all.

Section 6 (1) of the Uniform General Partnership Act.

Section 6 (1) of the Uniform General Partnership Act defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." This is, but an adaptation of the common law definition of partnership as given in the best considered cases (*Meehan v. Valentine*, 145 U. S. 611; *State Bank v. Butler*, 149 Ill. 575).

The majority opinion held that respondents do not come within this definition of a partnership, and said, "The contractual relation of petitioners does not fall within this definition." And referring to the respondents other than Hecht and Finn, the court said that they "do not by the finally executed contract purport to have entered into any partnership arrangement of any sort."

What then was their relation? They were associated together. They were engaged in a business for profit. They were carrying it on as co-owners. They each contributed capital. They shared in the profits in proportion to the capital they contributed. They were to bear losses in the same proportion. They had power to dissolve the firm. On dissolution of the partnership the assets were to be distributed among them. What element is lacking to constitute a partnership within the definition of the Uniform Act?

In further reasoning to the conclusion that no relation of partnership existed in this case, the court referred to the first part of Section 7 of the Uniform *General Partnership Act*, which is:

"In determining whether a partnership exists these rules shall apply:

(1) Except as provided by Section 16, persons who are not partners as to each other are not partners as to third persons."

(Section 16 relates to partnership on account of representations, and has no application.)

The Court of Appeals then, in connection with the provision of the act just quoted, declared that *intention* to form a partnership was a fundamental requisite to a partnership, that if such intention was lacking the co-operating parties could not be held as partners as between themselves, and that, as the law just quoted provides that "persons who are not partners as to each other are not partners as to third persons," therefore persons could not be partners *as to third persons* unless they *intended* to be partners *to each other*.

Following this line of reasoning the court went further and divided partnerships into general and limited, and held that if parties intended to be limited partners, but were not so, through violating some statute, they could

not be held as general partners. Although they had intended to be partners of one kind, they could not be held to be partners of another kind. At one stroke this does away with all decisions holding as general partners those who wished or intended to be special partners.

Upon this fallacious reasoning the court held that as respondents intended to become limited partners but failed to become so under either the old or the new law, and as the *intention* to become one kind of a partner did not include becoming another kind of a partner, even as to third parties, and as they did not intend to become general partners, therefore, *they were not partners at all*. It would be hard to conceive a more illogical deduction.

In support of this reasoning the court, conscious that it was construing an Illinois law, cited five Illinois cases and one opinion of this court (*Goacher v. Bates*, 280 Ill. 372; *Smith v. Knight*, 71 Ill. 148; *Grinton v. Strong*, 148 Ill. 587; *National Surety Co. v. Townsend Brick Co.* 176 Ill. 156; *Insurance Co. v. Barringer*, 73 Ill. 230; and *London Assurance Co. v. Drennen*, 116 U. S. 461.)

In the *Goacher* case a live stock trader obtained money from a bank, his account being guaranteed by the cashier thereof, who was to receive for his guaranty part of the profits but not stand any losses. An accounting was asked on the basis of a partnership. The court held that there was no partnership.

In the *Smith* case money advanced to a partnership was to be repaid with interest and, as extra compensation for the loan, part of the profits of the business was to be paid, but the lender was not to be responsible for losses. The court held that no partnership was intended.

In the *Grinton* case Grinton was to take complete

charge of certain property, superintend expenditures on account of it, collect rents, etc. and was to receive 3% of amounts collected for rents and a certain amount of the profits if the property was sold. Brinton asked for an accounting, claiming he was a partner. The court held he was not a partner.

In the *National Surety* case, the surety company resisted liability on a surety bond on the ground that the contractor had taken a subcontracting firm practically into partnership with him and thereby avoided the bond. The court held there was no partnership and the surety company was defeated.

The *Barringer* case was also a loan of money to a partnership together with some guaranty of credit, but the lender of the money was never interested in any profits or losses. An insurance company defended on the ground that the lender of the money had become a partner whereby a new partnership had been formed which the insurance policy would not protect. Held no partnership and the insurance company was defeated.

In the *London Assurance Company* case the insurance company interposed a defense that by the admission of a new partner the firm had been changed so as to avoid the policy of insurance sued on. The insurance company was defeated, the syllabus of the case being:

“An agreement by A with B that on the payment of a sum of money B shall participate in the profits of A's business, gives B no interest, *as between themselves*, in A's stock in trade, when it appears that it was their intention that he should have no such interest.”

In all of these cases the courts, as was to be expected, dwelt particularly on whether there was an intention to form a partnership and in each of them found there was no such intention. The courts repeatedly said that as

between the parties there was no partnership. They also repeatedly laid down the doctrine that partnership did not depend upon the language used but upon what was done. The parties might declare themselves to be partners and yet not be partners; might declare themselves not to be partners and yet be partners, and that they might not be partners as between themselves and yet be partners as to third persons.

We submit that none of these cases are in point and that they do not support the ruling opinion.

The Court of Appeals also held that under the law as it was prior to the adoption of the Uniform Partnership Act, the existence of a general partnership "as between the parties themselves" was wholly a question of intention, and that therefore under Section 7 of the Uniform Act persons not intending to be partners as to each other cannot be partners as to third persons, and therefore the respondents were not partners at all.

This interpretation and application of Section 7 makes that section work a radical change in the law of partnership. It gives that section a very far-reaching effect.

Under that section as it is interpreted and applied by the Circuit Court of Appeals, several persons, as did respondents in this case, can associate themselves together, contribute capital to a banking or brokerage business, share profits and losses, enjoy all the advantages of a partnership, and then, when insolvency comes, if it can be made to appear that, although intending to enter into a relation with all the incidents of a partnership, they did not intend to be partners *inter se*, they are not liable as partners to third persons and thus escape all liability.

At common law it was the intention to enter into a relationship to which the law thereupon attached

partnership rights and liabilities, which was the criterion of a partnership.

The meaning of "intention" when used in ascertaining whether a partnership exists is a legal intention *shown by acts*, and as we are discussing the construction of an Illinois act, we cannot show what intention means better than is shown in the Illinois case next cited and by the authorities following it.

In *Fougner v. First National Bank*, 141 Ill. 124, it was said (p. 132):

"While the intention of the parties is the criterion by which to determine whether or not a partnership has been formed, yet, as said by Justice Matthews in his work on Partnership (page 12, Sec. 31): 'It is very plain that parties cannot by agreement, enter into a partnership, and at the same time agree that what they have entered into shall not be a partnership.' Or, in the language of Breese, C. J., in *Lintner v. Millkin*, 47 Ill. 178: 'Parties may become partners without their knowing it, the relation resulting from the terms they have used in the contract or from the nature of the undertaking. They may make a bargain together without knowing it, which creates or involves a partnership, and subjects them to the law of partnership.'"

Meehan v. Valentine, 145 U. S. 611, is probably the leading case in this country on partnership. In that case Mr. Justice Gray undertook, after careful analysis of the cases, and sources of the law, to lay down some fundamental principles covering the law as to creation of partnerships. His conclusion was (p. 623):

"In the present state of the law upon this subject it may perhaps be doubted whether any more precise general rule can be laid down than, as indicated at the beginning of this opinion, that those persons are partners who contribute either property or money to carry on a joint business for their common benefit and who own and share the profits thereof in certain proportions. If they do this, the

incidents or consequences follow that the acts of one in conducting the partnership business are the acts of all; * * * that all are liable as partners upon contracts made by any of them with third persons within the scope of the partnership business; *and that even an express stipulation between them that one shall not be so liable, though good between themselves, is ineffectual as against third persons.*"

Textbooks state the same doctrine. In 20 Ruling Case Law, p. 833, it is said:

"The intent, the existence of which is deemed essential, is an intent to do those things which constitute a partnership. Hence, if such an intent exists, the parties will be partners notwithstanding that they intended to avoid the liability attaching to partners or even expressly stipulated in their agreement that they were not to become partners. It is the substance, and not the name, of the arrangement or contract between them which determines their legal relation toward each other."

Likewise in 30 Cyc., page 360, it is said:

"When a court is called upon to determine whether a particular contract constitutes a partnership between the parties thereto, its controlling purpose is to ascertain their intention *as that is disclosed by the entire transaction*. But the intention which controls in determining the existence of a partnership is *the legal intention deducible from the acts of the parties*, and, if they intend to do a thing which in law constitutes a partnership, they are partners, although their purpose was to avoid the creation of such relation. Particular clauses in the contract, or even express statements that it does or does not constitute a partnership, are not conclusive upon the subject."

The limited partnership act does not mean that persons who *say* they are not partners as to each other are not partners as to third persons. This must be so, otherwise parties intending to go into a joint venture could draw up partnership articles, provide for all the

incidents of a partnership and then rid themselves of partnership liability by merely adding to their contract.

"The parties hereto shall not be partners as to each other."

If such a clause would relieve them from partnership liability there would be no need for limited partnership statutes. Partners may provide that some of them shall have large and some of them small interests in the partnership. As between themselves such provisions would govern. As against a third person, however, every partner would be liable for all the obligations of the partnership.

Under Illinois law a brokerage house that started business on July 2, 1917, could have been one of only three legal conceptions—a corporation, a limited partnership or a general partnership. There is no other possibility. These three divisions cover the entire field. Admittedly it was not a corporation. It is practically conceded that the parties failed in their attempt to create a limited partnership. Marcuse & Company must necessarily, therefore, have been a general partnership.

In holding that where parties intended to form a limited partnership but failed, they did not and could not become liable as general partners because they did not intend to be such, the construction of the statute by the Court of Appeals is in direct conflict with the decisions of the Illinois courts, which have repeatedly held that on failure to secure the statutory protection because of noncompliance with the limited partnership act, the partners *become liable as general partners*. In *Henkel v. Heyman*, 91 Ill. 96, the parties failed to properly file the statutory certificate and the court, holding them liable as general partners, said (p. 101):

"The common law did not admit of partnerships with a restricted responsibility, and the statute,

therefore, authorizing limited partnerships must be substantially complied with, *or those who associate under it will be liable as general partners.*"

In *Manhattan Brass Co. v. Allin*, 35 Ill. App. 336, where the court found the certificate did not meet the statutory requirements, it was said (p. 341):

"It may be a hard case, and contrary to what the parties intended but did not express, to hold the appellees other than B. C. Allin as general partners; but the law is settled that 'the statute authorizing limited partnerships must be substantially complied with, *or those who associate under it will be liable as general partners.*'"

In *Walker v. Wood*, 69 Ill. App. 542 (affirmed 170 Ill. 463), one of the purported limited partners had signed the requisite certificate by an agent and the court said (p. 549):

"The case presents important questions but we sum up our opinion by saying that the statute under which limited partnerships may be formed was not complied with, and *unless that is done the partnership is general.*"

There are many other authorities to the same effect. In 19 A. & E. Enc. of Law, 2nd Ed., p. 339, under the head of "Limited Partnerships," it is said:

"Generally a noncompliance with the statute will render the special partner *liable as a general partner.*"

And again (p. 343):

"The statutes authorizing the formation of limited partnerships all provide in what business such partnerships may engage. *A limited partnership cannot be formed for the transaction of any business not authorized by statute*, and an attempt to do so renders the firm an ordinary partnership in which all the members are generally liable."

And again (p. 353):

"A false statement in the affidavit renders all members *liable as general partners*, and it is imma-

terial whether or not the special partner knew of the false statement or whether it was made intentionally or unintentionally, or whether creditors were injured by it or not."

Many cases are cited in support of the above text.

The new Illinois uniform limited partnership act provides, as the principal preliminary, that the parties shall sign and swear to a certificate. It then requires that certificate to be recorded. Then there is a requirement that the certificate can only be amended by a statement signed and sworn to by all the parties, and there are other like requirements. Should parties now associate themselves under the new act and not sign such a certificate or swear to it or record it, but proceed to carry on business as a partnership, has the law been so greatly changed that they would not all be chargeable as general partners?

The interpretation put upon Section 7 by the Court of Appeals changes this long-established law and makes the intention to form a partnership *inter se* the *final* test of partnership *as to third parties*, and holds that if that intention was not present, there is no partnership under any circumstances.

That the Court of Appeals realized that its interpretation of Sections 6 and 7 worked a substantial change in the law of partnership is evidenced by its statement that with the wisdom of such a change of policy it is not concerned, and that if, under the construction given the statute the new test of partnership proved impracticable in experience, the remedy is with the legislature alone. A law so important, prepared with so much care and passed by so many states, ought not to be given so strained and unusual a meaning and then tossed lightly back for amendment.

The commissioners on uniform state laws, and the

legislatures of Illinois and other states, in enacting the uniform general partnership law, could not have intended any such far-reaching effect by Sections 6 and 7. Section 6 defines a partnership. Under the court's interpretation of Section 7, although all the elements of a partnership as defined in Section 6 are present, if the parties did not intend between themselves to become partners, a partnership did not exist.

The further subdivisions of Section 7 explain its purpose. It is provided that a mere joint tenancy or common ownership of property or the sharing in gross profits or returns received, as interest on a loan, wages of an employee, annuity to a widow of a deceased partner, consideration for the sale of good will of the business, etc., do not constitute a partnership. This but declares a common law principle, except that a few courts have held that sharing in profits was a conclusive test of partnership and made the parties liable even though the profits were received as compensation by an employee, for a loan of money, etc. Section 7 was intended to clarify and codify the law of partnership in this regard, and not to work an overwhelming change in all our ideas of partnership.

As above interpreted and applied by the Court of Appeals, Section 7 is not a codification of the present law on partnership but works a most radical change in that law.

Respondents However, Did Intend to Form a Partnership between Themselves. The Evidence Shows Such an Intention and Supports the Finding of the District Court.

To apply its interpretation of Section 7 and its conception of the law of intention to this case, the Court of

Appeals found as a fact that the respondents did not intend to become partners as between themselves. As there was evidence to the contrary and as the District Court evidently found to the contrary, we do not see how the Court of Appeals could consider that question of fact.

To show and that the parties *did intend* to enter into a partnership, we submit the following extracts from the final partnership. The first recital is:

"Whereas the said parties *desire to become partners* with one another under the name of Marcuse & Co." (Rec., 20.)

"(1) The said parties above named have agreed *to become copartners in business* and by these presents do agree *to be copartners* to one another under the firm name and style of Marcuse & Co. in the brokerage business of buying and selling for others on commission, stocks, bonds, grains, provisions and various commodities." (Rec., 20.)

"(6) It is further hereby agreed that all of the capital to be contributed as aforesaid, shall be used and employed by *the said partnership* for the purpose of carrying on the business agreed to be conducted under the terms hereof, and for no other purpose." (Rec., 21.)

"All of the balance of the said net profits of said business shall be divided among all of the parties hereto except the said Morris in the proportions in which they have contributed to the capital or capital stock of said firm." (Rec., 23.)

"All losses of every kind sustained in said business shall be paid by the *said copartners* in the same ratio and proportion as said profits are divided." (Rec., 23.)

The partnership agreement signed June 30th was signed by Marcuse, Morris, Hecht and Finn. (Rec., 25.) The so-called Hecht and Finn trust was signed by Hecht and Finn (Rec., 31), and on the succeeding page a certificate is attached thereto signed by Marcuse, Morris,

Hecht and Finn "individually *and as copartners* under the firm name of Marcuse & Co."

There is hardly a paragraph in the agreement which does not refer to the parties as partners and the agreement as a partnership agreement.

The parties therefore understood and *intended* to enter into a partnership relation. They may have hoped or intended to become limited partners, but they did intend to become partners as to each other.

V.

CLEMENT AND GEORGE M. STUDEBAKER WERE PROPERLY HELD TO BE PARTNERS.

The Studebakers insisted in their pleadings and arguments that they were not partners in Marcuse & Company, but that the \$50,000 put into that firm and contributed by them was in reality a contribution to the firm by the Studebaker Brothers Trust. That contention is wholly unsupported by the testimony, and the District Court having heard conflicting testimony on that point placed the two Studebakers in the same category with Hecht, Finn, Zuncker and the rest of the respondents. In so doing the District Court must have been satisfied from the evidence that the Studebakers were partners and that the contribution had been made by them. There was abundant evidence to support this implied finding of the District Court.

Marcuse testified that in March, 1917, he had a conference with Clement Studebaker in Boston and told him of the plan outlined for forming a new partnership to take over the Von Frantzius business and to pay the Von Frantzius creditors. Marcuse asked Studebaker to contribute \$50,000 or \$100,000 to the new firm. Clement

Studebaker told Marcuse that he and his brother George would act together in the matter and would contribute capital to the proposed firm. The amount of the contribution was left open (between \$50,000 and \$100,000) but Clement told Marcuse that he would immediately communicate with Scott Brown of Chicago who would attend to the details. (Rec., 442-446.)

On Marcuse's return to Chicago, Brown told him he had received a letter from Clement Studebaker instructing him to give Marcuse assistance and to help him get the new firm started, but that he wanted to keep the contribution low and had decided that its amount should be \$50,000. (Rec., 447.)

Marcuse testified he received \$50,000 from Brown for the firm and said: (Rec., 448):

"Q. What did Brown tell you as to where this money came from, if anything,—this \$50,000?

A. From the Studebaker Brothers.

Q. Did he mention the names?

A. Yes.

Q. What names did he mention?

A. Clement and George M."

In signing the original partnership articles and agreeing to contribute \$50,000 Hoffman was admittedly acting for the Studebakers.

Marcuse further testified that after the original plans had been upset by the discovery of the New York Stock Exchange rule, he told Brown about the new plan and Brown told him that Hecht had made a very favorable impression upon him and he was satisfied to have Hecht represent their interests. (Rec., 467.)

Afterwards claims of all the respondents against the Von Frantzius estate, including the Studebaker claims, were assigned to Marcuse.

Neither of the Studebakers testified on the hearing.

The only other testimony showing the Studebakers connection with the partnership was of their counsel, Buckingham.

Buckingham testified that he was absent from Chicago when the first partnership articles were signed, and returned in May; that after his return, Stein and Marcuse came to his office to meet him and Brown by appointment; that Stein told Buckingham of the difficulty in organizing Marcuse & Company, and that it was necessary to get up another arrangement as he could only have two special partners; that he would like to have some one representing the Studebakers' interest as a special partner, and asked that their contribution be increased to \$100,000. (Rec., 551-53.)

Buckingham testified that he told Stein and Marcuse that he would not consent to anyone in their group appearing as a special partner; that he would not consider contributing more than \$50,000; that that would be contributed from the Studebaker Brothers' Trust, and that he would want a trustee's certificate that could be put into the trust fund. (Rec., 552-53.) He further testified that Stein submitted to him two drafts of the revised agreement, neither of which was quite satisfactory to him, and that he, Hoffman and Robertson (the latter representing Vette and Zunker) prepared the final draft of the documents which were executed. (Rec., 564.)

The Studebaker contribution to the fund was made with the check of the Studebaker Brothers Trust to the order of Hoffman, endorsed by Hoffman to Hecht and Finn, and by the latter to Marcuse & Company.

The certificate of interest in the enterprise given to Hoffman was made out in his name and by him endorsed and sent to the Chicago Title & Trust Co. and it was after that carried as part of the Studebaker Trust.

The Studebaker Brothers Trust was brought into court and introduced in evidence. (Rec., 576.) It was an agreement with only three parties interested, Clement and George Studebaker and Scott Brown. The two former contributed the funds to create a trust of which the Chicago Title & Trust Company was trustee. It was to be administered by three directors, Clement and George Studebaker and Scott Brown. The other two directors had the right to remove Brown. The entire income of the trust fund was to be paid to the two Studebakers, or as they directed, except a salary and percentage of the profits to Brown, as compensation for his services..

On dissolution, the *corpus* was to be distributed amongst the grantors *pro-rata* in proportion to the value of the securities they had contributed to the fund.

On this testimony, the District Court found that Clement and George Studebaker had contributed \$50,000 to and were partners in the firm of Marcuse & Company.

The fact that their contribution was made by a check of Studebaker Brothers Trust is entirely immaterial. The contribution of Regensteiner, for instance, was paid by a check of the Regensteiner Colortype Company. From the inception of the scheme it was the desire of Clement and George Studebaker to contribute \$50,000 towards the new firm that they might collect their losses from the Von Frantzius failure.

It makes but little difference how they made the contribution to Marcuse & Company; whether they did it in the name of Hoffman or in their own name, or in the name of the Studebaker Brothers Trust. It makes but little difference how the profits going to the Studebakers were distributed, whether to Hoffman, the Chicago Title & Trust Company, Studebaker Brothers Trust or to

George and Clement Studebaker individually. The so-called Studebaker Brothers Trust was but a joint venture or partnership in which the Studebakers were partners. There was no element of trust about it; the Chicago Title & Trust Co. was depository and held the funds to be invested; the two Studebakers, the beneficiaries, had complete control thereover. Their liability under any circumstances would be the same. In Illinois at least joint ventures of this character are nothing but partnerships (*People v. Brander*, 244 Ill. 26, and cases there cited; *Morse v. Richmond*, 97 Ill. 303.)

Neither of the Studebakers took the stand to dispute in any way the testimony of Marcuse, of Hoffman, or of Brown. The faltering explanations given by Buckingham cannot avail, and the testimony to the effect that George and Clement Studebaker were partners, equally with Finn, Vette and the other respondents, stands practically uncontradicted. Certainly there was evidence to justify the District Court in entering the order complained of.

Liability of Hecht and Finn Is Not Contingent on the Liability of the Other Respondents.

The primary liability of Hecht and Finn in the first instance is not affected by the more lengthy discussion as to the liability of the other respondents. Hecht and Finn did sign the partnership articles. The certificate which the statute expressly made a condition precedent to the formation of a special partnership, was not filed until after repeal of the only statute under which a limited partnership to conduct a brokerage business could be formed. The abortive limited partnership must, therefore, have become a general partnership and Hecht and Finn are liable in the first instance as general partners.

This primary liability of Hecht and Finn which seems to be conclusive, can be stated in a few words, and, therefore, occupies a relatively small part of this brief. We further insist that Hecht and Finn were liable for the *additional* reason that the statutory certificate was false. We also insist that Hecht and Finn were but the representatives of themselves and the other respondents and that they are all in the same situation. The relation of the other respondents to the partnership involved the consideration of more documents and more testimony and, therefore, occupies the larger portion of this brief. Even if the court should not agree with our position as to the relation of the other respondents to Marcuse & Co., this does not affect in any way the primary liability of Hecht and Finn arising from failure to complete the special partnership prior to the repeal of the statute.

CONCLUSION.

On July 2, 1917, the firm of Marcuse & Co. started business. It was formed for the purpose of and carried on solely a brokerage business. In March, 1920, it wound up in bankruptcy. The capital was furnished and the profits and losses were to be divided amongst the respondents. As originally planned, each of the respondents in his own name was to appear as an alleged special partner. To circumvent a rule of the New York Stock Exchange the *form* of the transaction was changed so that the respondents other than Hecht and Finn would make their contributions through the two latter and on the face of the papers there would appear to be but two special partners. The respondents, however, reserved to themselves the right to examine the partner-

ship books, receive monthly reports and annual inventory and audits, to appoint auditors to examine the books and to dissolve the business—every right of a special partner.

They received, up until the eve of bankruptcy, alleged profits. Starting business on July 2, 1917, within four months the firm's capital was gone. Beginning, however, with December of 1917 and continuing until December, 1919, semi-annual interest and alleged dividends were paid respondents. These dividends were not only not paid out of profits, but they were not even paid out of the firm's capital. They were paid out of the customers' money. In December, 1919, on the eve of bankruptcy and when the firm must have been hopelessly insolvent, over \$13,000 of customers' money was distributed as alleged dividends. If respondents did not know the condition of the business and the source of these alleged dividends, they should have known it. They had carefully reserved to themselves the right of examining and auditing the books and of receiving monthly and annual reports. *If* they did not know the condition of the business, it was their own fault.

Admittedly the attempt to form this concern as a special partnership failed, but for nearly three years it went on doing business. It was not a corporation. It was not a limited partnership. What else could it have been but a general partnership?

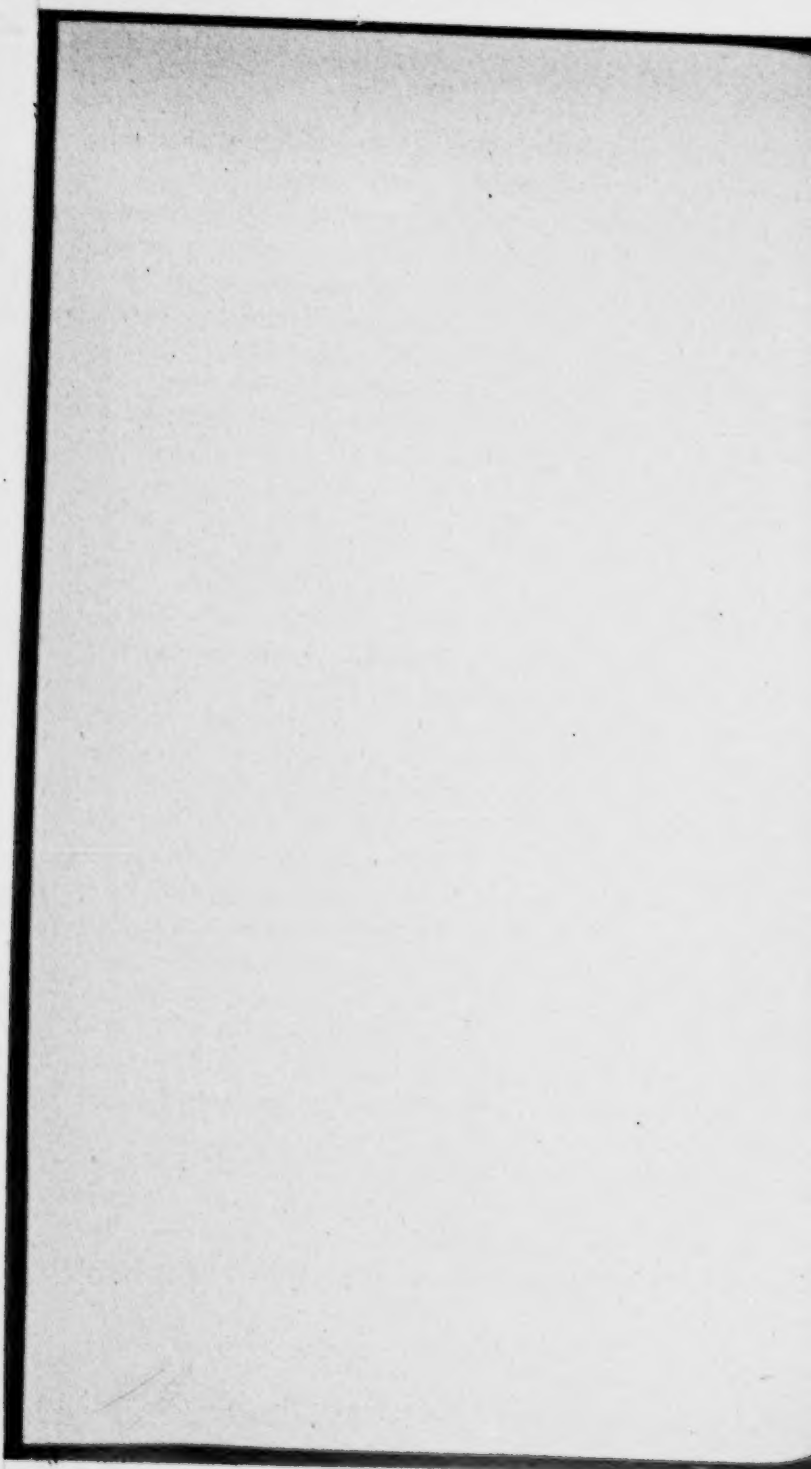
Had this firm been successful, had large profits been realized, respondents would, in proportion to their contributions, have profited thereby. For the manner in which the business was conducted and for its present condition, they, not the public, and not the creditors, are responsible. Theirs should be the loss. There is no inequity in holding those who owned the business

and who would have realized the profits, had the business been successful, liable for its debts.

We respectfully submit that the order of the District Court should be affirmed.

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Attorneys for Petitioners.

CHICAGO, July, 1923.



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WM. R. STANS

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES ET AL.,
Petitioners,
vs.

HENRY VETTE ET AL.,
Respondents.

BRIEF AND ARGUMENT FOR EXECUTORS OF FRANK A. HECHT
AND JOSEPH M. FINN, RESPONDENTS.

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INDEX.

	PAGE
Statement of reasons for separate brief.....	1
Statement of facts	5
Pleadings	5
Limited partnership shown by stationery.....	8
Amount of refund sufficient	8, 41
All respondents equally liable if Hecht and Finn held liable	14, 44, 51
Provisions of Hecht Finn Trust	19, 62
Brief of argument	25
Respondents not general partners.....	25
Illinois Limited Partnership Act of 1874.....	25
Effect of Acts of 1917 upon Act of 1874.....	26
Illinois rule as to statutory construction.....	27
Illinois General Partnership Act of 1917.....	31
Illinois Limited Partnership Act of 1917.....	33
Respondents all protected by Hecht-Finn renounce- ment	35
Mistake of law may be foundation of erroneous belief	40, 41
Hecht and Finn personally protected by refund....	43
Argument	51
Relation of other respondents to limited partner- ship and Hecht-Finn trust	54
Original limited partnership contract of April, 1917.	57
Final formation of limited partnership on June 30, 1917	60
Partnership articles	61

TABLE OF CASES.

	PAGE
City Bank v. Bank of Republic, 300 Ill. 103.....	27, 37
Corpus Juris, Vol. 5, p. 1363	46
Commercial National Bank of New Orleans v. Canal- Louisiana Bank, 239 U. S. 520	27, 37
Crehan v. Megargel, 234 N. Y. 67.....	26
Cummings v. People, 50 Ill. 132.....	49, 52
Fleming v. Ross, 225 Ill. 149.....	49, 52
Fougnier v. Bank, 141 Ill. 124.....	46
Harvard Law Review, Vol. 36, 1016.....	38
Harvard Law Review, Vol. 36, 1017.....	39
Kingsland v. Koeppe, 137 Ill. 344.....	50, 53
People v. Brander, 214 Ill. 26.....	46
People v. Rose, 219 Ill. 46	46
Pettis v. Atkins, 60 Ill. 454.....	46
Philippine Sugar, etc. v. Government of the Philip- pine Islands, 247 U. S. 385.....	41
Robbins v. English, 24 Ill. 387.....	45
Sinsheimer v. Skinner Mfg. Co. 165 Ill. 116.....	49, 52
Tandrupp v. Sampsell, 234 Ill. 526.....	49, 52
Wisner v. Catherwood, 225 Ill. App. 471.....	49, 52

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 59.

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

C. B. GILES ET AL.,
Petitioners,

vs.

HENRY VETTE ET AL.,
Respondents.

CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT.

BRIEF AND ARGUMENT FOR EXECUTORS OF
FRANK A. HECHT, DECEASED, AND FOR JOSEPH M. FINN, RESPONDENTS.

The interests of Frank Hecht (deceased) and Joseph M. Finn and their attitude toward the questions of law involved in this proceeding at various points differ radically from the interests and claims of the other respondents in this case.

While we confidently contend that the decision of the Court of Appeals should be upheld and that only Ben

Marcuse and L. H. Morris should be held to be general partners in the firm of Marcuse & Company, yet we contend with equal confidence that if, contrary to our belief, this court should hold that those who signed the limited partnership agreement of June 30, 1917, must be held as general partners of the firm of Marcuse & Company, then the respondents, Vette, Zuncker, Regensteiner, George M. Studebaker and Clement Studebaker, must be held to the same responsibility. It is evident, therefore, that, while we are directly opposed to the petitioners in their claim that all the respondents should be held liable as general partners, we are equally opposed to the claim of the other respondents that, if Hecht and Finn shall be held as general partners, yet the other respondents escape, even though, as signers of the so-called Hecht-Finn Trust Agreement, they participated equally with Hecht and Finn in both the benefits and the powers which the latter might receive and exercise under the limited partnership agreement.

It is, therefore, not only proper but necessary that a separate brief should be filed on behalf of Hecht and Finn. And while we will endeavor to avoid repetition of the arguments of the other respondents upon points where their interests are identical with our own, or like repetition of the argument of the petitioners upon matters where their contention is akin to our own, yet we believe that our duty to our clients and to the court compels us to present the reasons for our position.

We agree in the contention of petitioner's counsel that a decision holding that Hecht and Finn are liable would logically involve a similar liability on the part of the other respondents. We do not, however, fully coincide with all the statements of petitioner's counsel in their argument upon this and the related questions.

On the other hand, we cordially agree with the brief and argument of counsel for the other respondents as to the purpose, scope and effect of the provisions of the Partnership Acts passed by the Legislature of Illinois, which became effective on July 1, 1917, although we likewise are unwilling to be charged with some suggestions made in the course of that argument seeking to differentiate between the position of Hecht and Finn and of the other respondents, whereby it is suggested that the responsibility of the other respondents is less than that of Hecht and Finn.

With this explanation of the reasons which have compelled us to file a separate brief instead of joining the other respondents in their brief and argument, we beg to suggest that our own contentions on behalf of our clients are as follows:

First. We contend that neither Hecht nor Finn ever were general partners in the firm of Marcuse & Company or responsible as such.

Second. We contend that if the statute of 1917, becoming effective July 1, 1917, removed from Hecht and Finn the protection of the limited liability provided by the Act of 1874, nevertheless, under the terms of the Act of 1917, the renunciation by Hecht and Finn of their interest in the profits of the business or other compensation by way of income, and their refund of \$46,000, which was more than the amount of all the profits or other compensation by way of income received by all the persons who took part in the formation of the firm of Marcuse & Company other than Marcuse and Morris, fully exonerated Hecht and Finn from any further responsibility beyond the obligation of a special partnership.

Third. While we contend that the action of Hecht and Finn, although not expressly sanctioned by the other respondents, operated to exonerate all such respondents from liability as general partners, yet we point out that Hecht and Finn personally contributed each \$23,000 and personally signed the instrument of renunciation; and that, as to Hecht and Finn, there can be no question that the renunciation was direct and explicit and the tender more than ample.

Fourth. We contend that the actual relationship of the parties evidenced by the execution of the Hecht-Finn trust contemporaneously with and as a part of the partnership arrangement constituted such a relation between the contributors to the partnership funds attempted to be established under the limited partnership law as it existed prior to July 1, 1917, that the other contributors to such fund who executed the Hecht-Finn trust agreement were equally responsible, if responsible at all, for the debts of Marcuse and Company.

Fifth. We contend that, if Hecht and Finn are to be held liable as general partners, the correct decision of the responsibility of the other contributors to the capital of the limited partnership is of supreme importance to Hecht and Finn, for the reason that, to hold all the contributors to the limited partnership fund liable would be to inflict upon each one a heavy but sustainable loss; while, to impose the exclusive burden of that loss upon Hecht and Finn, would spell ruin for them both.

STATEMENT.

The case was decided in both the lower courts upon the legal effect of the documents executed by the parties in connection with the formation of the partnership of Marcuse & Company, and which evidenced the contributions made by the different respondents to the capital of the firm and the rights which they had *inter sese* with reference thereto. As it is suggested in the brief of petitioner's counsel that a presumption is to be indulged that the District Court found some other facts which might sustain its decision, we call attention to the following features of the case supplementing and in some respects correcting petitioners' statement of it:

PLEADINGS.

The proceeding was a petition in bankruptcy to have the respondents adjudicated bankrupts. In the inception of the case the proceeding was against Marcuse, Morris, Finn and Hecht; the other respondents being made parties afterwards, when the creditors had learned of the facts now *relied* upon to hold all of the respondents liable. (Pr. Rec., 33.)

No petition alleged as a reason for holding respondents liable that there was any fraudulent concealment; or that any statement in the articles was either fraudulent or false. The case was based upon the documents themselves, coupled with the allegation that the statute of 1874 was repealed by the statute of 1917; that the later statute did not allow the formation of a limited partnership to engage in brokerage business and that the partnership articles were filed in the office of the county clerk

on July 2nd. (Pr. Rec., 42-47.) As a matter of pleading there was presented, as the basis of the creditor's rights, no issue involving anything but the legal question of the effect of the instruments as executed. A finding of fraud or false statement would not have been responsive to any issue made by the petitioner's pleadings.

The District Court made no finding of facts which, either directly or by inference, included a charge of fraud or of false statement in the partnership articles, its decision in reality is but a statement of its legal conclusion from the documents.

The conclusion announced by the court was:

"That the so-called special partners are all general partners; that these so-called 'special' partners selected—all of them selected, Hecht and Finn as the agents for the operation of the special partnership by and through Hecht and Finn; that Hecht and Finn in fact were Hecht, Finn, Vette, Regensteiner, the Hecht-Finn trust, the Studebaker trust, as Clement and George Studebaker—that is what Hecht-Finn were; they were all of these people; and that thing was not a special partnership but it was by the law a general member of a general partnership, by reason of the failure to comply with the Illinois statute specifying the steps and prescribing the route to be taken to constitute a limited partnership, which as I have announced before, it was my view had to be obeyed to accomplish that end, but which in this case was not done in any essential particular." (Pr. Rec., 689.)

The order of the District Court made no further statement in the nature of finding of facts, but merely directed the referee to make findings of fact and conclusions of law as to the solvency up to March 11, 1920, of all of the respondents (naming them) "composing the firm of Marcuse and Company." (Pr. Rec., 222.)

The statement in petitioners' brief that the adoption of the Hecht-Finn trust and the execution of limited partnership papers by Hecht and Finn alone as limited partners, was for the purpose of "circumventing," or deceiving, the New York Stock Exchange is merely the use of an epithet to describe a fact. The fact is that the parties were advised that the papers which they finally executed complied with the requirements of the Stock Exchange, and were proper to be executed to form a limited partnership, without liability on the part of any one except the general partners.

The revised partnership agreement and the Hecht-Finn trust.

Counsel say that these documents were a part of one transaction. (Brief, p. 15.) But when construing them together—as such documents are construed—counsel make a statement of their provisions which may be somewhat misleading. For they speak of the partnership articles as containing certain provisions—thus presenting it as a separate agreement. They then turn to the Hecht-Finn trust and, treating it as a separate document, assert that it *restores* certain rights which the other document *took away*. Specifically, they say that Hecht and Finn, under the partnership article, were to draw the dividends payable to all "the special partners"; and that the other respondents had no power to appoint an auditor, or call for a dissolution. (Brief, p. 14.) Then, taking up the Hecht-Finn agreement—which they say was a part of the very document they had been discussing—they say that it *restores* to the respondents other than Hecht and Finn the very things which the other document, on their contention, had taken from them. (Brief, p. 15.)

But the substance of the transaction and the very theory of petitioners that these documents should be construed together, show that they did not give to Hecht and Finn the right to draw these dividends, audit the books, or exercise other independent powers, but expressly provided that the dividends should not be paid to them, but to the Chicago Title & Trust Company, as a sort of receiving agency for all who had contributed the capital: It is plain that Hecht and Finn had no greater power in the association than was possessed by any of the other respondents; and that this result was provided for by the concurrent action of all the respondents in the documents which they executed.

The case does not involve the equity of a creditor who has relied upon a deceptive appearance of partnership.

All of the letterheads and other papers of the firm show that Hecht and Finn were only limited partners. (Pr. Rec., 348-527-528.)

No creditor dealt with the firm upon the assumption that they would be liable for his debt.

The relations of the other respondents, through the Hecht-Finn trust, was entirely unknown. No creditor knew of their relation or gave credit to the firm because of their connection with it.

Everyone who dealt with the firm did so upon the assumption that no one was liable for his debt except Marcuse and Morris.

The amount refunded by Hecht and Finn was sufficient to cover everything received by them.

It is suggested that the \$46,000 refunded by Hecht and Finn may not have been sufficient to cover all that had

been paid by way of profits to special partners, because payments may have been made by Marcuse upon the old claims which the respondents had against the firm of Von Frantzius.

There is no foundation for this claim; it was not made in the District Court; no evidence was offered showing that such payments had been made.

It was undisputed that the \$46,000 was ample to cover everything which ought to be refunded to comply with the statute.

No objection, or argument based upon this ground was made in the Circuit Court of Appeals. That court expressly stated that:

"The uncontradicted evidence is that the amount thus paid was sufficient to cover these items." (*i. e.*, as stated by the court the interest and profit paid by the firm to the investors of the entire \$190,000 since the organization of the firm, including interest thereon from time of payment.) (Pr. Rec., 738.)

The court also said:

"The record shows the compliance was to the fullest extent that might be claimed on behalf of creditors; and it is not contended that the unconditional payment of the \$46,000 falls short of compliance with the section if the section had application." (Pr. Rec., 743.)

The foregoing quotation from the opinion of the Circuit Court of Appeals is fully justified by an examination of the record and by an inspection of the briefs filed by the petitioners in the Circuit Court of Appeals.

The claim now made in petitioners' printed argument, that the contributors to the capital of the limited partnership received payment of a share of the profits of Ben Marcuse through the application of such share of the profits to the payment of the debts of Von Frantzius & Co., was never made in the District Court and never sug-

gested in the Circuit Court of Appeals. If there were any foundation in fact for the statement that such profits were distributed to the creditors of Von Frantzius & Co., including the respondents, it would be a sufficient answer to say that any sums so paid would have been received by the respondents not as partners in Marcuse & Co., but as creditors of Von Frantzius and it could not have been a proper condition of renunciation by the limited partners that they should also return payments made to them in a different capacity.

But an even more categorical answer can be made by the statement that it is not a fact that any of the respondents ever received any share of the Marcuse profits by application thereof to the payment of any part of the Von Frantzius indebtedness. Not only is there no evidence in the record to support petitioners' statement, but the contrary is plainly deducible from the record.

The conditions under which Ben Marcuse was to apply any part of such profits to the payment of the Von Frantzius debts are clearly outlined in the testimony of Marcuse himself (Pr. Rec., 443, 444), where he says:

"I told him (Studebaker) that if I could form this firm, I had agreed to get the Von Frantzius estate out of bankruptcy and that I had obligated myself to pay any deficit that might arise out of the estate from my personal profits in a firm which I intended to form."

We call attention to the fact that it was only the DEFICIT which was to be so paid. There is no evidence as to the amounts which the firms of Von Frantzius & Co. owed to the contributors to the limited partnership and the statement in the argument of petitioners that they were probably the holders of the larger amount of the indebtedness is neither based on fact nor borne out from any proper intendment of the evidence. It appears that the

claims of the known creditors of Von Frantzius amounted to \$1,215,370.18 (Pr. Rec., 478), and there is no justification for the charge that more than a comparatively small fraction of this amount was owed to the respondents.

The record shows an exhaustive questioning of the witnesses before Judge Landis on all the points then in dispute but no suggestion is found in any of those questions that any part of the Marcuse profits had been paid to the Von Frantzius certificate holders. Had such been the fact, it is incredible that the extremely vigilant attorneys for the petitioners would not have made the fact clear but an examination of exhibits offered by the petitioners shows clearly the terms and the time when any share of the profits of Ben Marcuse from the new partnership was to be applied to the liquidation of the claims of the creditors of the old concern.

The whole plan of the liquidation of the Von Frantzius assets appears from the Probate Court records and the trust certificate offered in evidence. (Pr. Rec., 474, 488, incl.) The plan was as follows:

Marcuse procured the great majority of the Von Frantzius creditors to agree that the assets of the Von Frantzius estate might be turned over to Marcuse as trustee on his executing certain bonds and making certain payments for the protection of the administrators of the Von Frantzius estate. Marcuse satisfied the bulk of the claims so far as the administrators of the Von Frantzius estate were concerned by obtaining assignments of the claims of the individual creditors, and in return for such assignments Marcuse gave to each of the creditors the trust certificate found on pages 474 to 477 of the printed record. In this certificate he agreed:

1. To acquire the Von Frantzius assets.
2. That he would pay the Von Frantzius creditors who did not accept the trust certificates.

3. That he should organize a new partnership.
4. That he would turn over the Von Frantzius assets to the firm for liquidation in the usual course of business for the account of the certificate holders.
5. That after the assets had been liquidated, he would cause the firm to account to the certificate holder, and, if a deficiency then arose, that Marcuse would pay such deficiency out of profits accruing to him as a member of the new firm.

It is not claimed and could not be truthfully claimed that the assets of the Von Frantzius estate turned over to the new firm had been liquidated. While that matter is not set forth in the record, because it was not a subject of controversy during the trial in the District Court when all of the Marcuse & Company books and papers were accessible, yet we assert that the petitioners cannot deny that the account of Marcuse as trustee of the Von Frantzius assets remained one of the largest accounts upon the books of the new partnership, that a very large proportion of the assets taken over by Marcuse from the Von Frantzius estate remained unliquidated, and that therefore no occasion had arisen under the fifth paragraph of the Marcuse trust receipt for Marcuse to turn over any portion of the profits realized by him from the new firm. The exact language of the Marcuse trust receipt found in Section 5 on page 476 of the printed record is as follows:

“That immediately upon the liquidation of the said assets, I will cause said firm to make proper account thereof to said holder and, if upon the settlement of this said account with Von Frantzius & Co. any deficiency shall arise, I hereby agree to and do hereby obligate myself to pay such deficiency with lawful interest thereon in full out of any and all profits that shall accrue to me as a member of the said partnership so organized by me. That said profits so accruing to me as a member of said partnership shall be by me annually distributed among the holders of this and similar certificates

pro rata according to the deficiencies of each of such holders, and, in the event of a winding up or liquidation of said partnership, my share of the assets thereof shall likewise be distributed pro rata to the holders of this and similar certificates according to their respective deficiencies and to the extent that it may be necessary to pay such deficiency."

It is, therefore, plain that the distribution of Marcuse's share in the profits of the new partnership was not to be made until the trustee account had been liquidated, and the deficiency ascertained. As there had been no liquidation, there had been no deficiency established and therefore no profits had been so distributed, and the reason why the claim now made by the petitioners was not presented in the District Court becomes plainly established.

But in any view, the payment made by Hecht & Finn was far more than sufficient to cover all that they had received. The payment was from their own funds, no contribution being made by the other respondents. The statute of 1917 did not require Hecht and Finn, in order to secure for themselves the benefit of Section 11, to refund that which had been paid direct to the other respondents, without even passing through their hands. Whether—if there had been a shortage through any miscalculation of amounts—the payment would have been sufficient to extend the protection of the statute to the other respondents is another question, and one which is not involved in the protection of Hecht and Finn.

THE FACTS AND DOCUMENTS RELATING TO THE SITUATION AND LIABILITY OF THE RESPONDENTS OTHER THAN HECHT AND FINN, IF THOSE TWO ARE HELD TO BE GENERAL PARTNERS.

If it should be held that an omission of full and strict compliance with statutory provisions placed Hecht and Finn in a position where, as to creditors they are to be treated as general partners in the firm of Marcuse & Co., then it is important to consider whether the penalizing consequences of that decision can properly be limited to them, or whether it should include also the other respondents who were associated with them in the common enterprise out of which the liability arises. Upon that question the facts as to the provisions of the documents evidencing their relations are important. These are the documents relied upon by the petitioners to establish their initial and basic proposition that the firm was a general partnership.

The reasons for forming the partnership of Marcuse & Co. The contemporaneous agreement between Marcuse and respondents Vette and Zuncker.

Counsel for petitioners assert, and rely upon the fact, that the reason for the organization of the firm was not merely the expectation of profitable investment, but was also a means of saving something out of the wreck of a former enterprise in which all of the respondents—except Zuncker and Vette—were interested. We therefore summarize these facts, the provisions of the private agreement between Marcuse and respondents Vette and Zuncker, and of the Hecht-Finn trust, as follows:

The Studebaker brothers, Regensteiner, Hecht and Finn were creditors of the insolvent firm of Von Frantzius & Company. It was, therefore, planned by

Marcuse that the assets of Van Frantzius should be acquired by Marcuse, and that through this new arrangement the old claims against Von Frantzius might be collected. Marcuse, in testifying to this plan (Pr. Rec., 443) said that he told Studebaker that he would organize a new firm and desired him to become a special partner; that, if this could be done, Marcuse had agreed to get the Von Frantzius estate out of bankruptcy and had obligated himself to pay from his personal profits in the firm any deficit that might arise out of the Von Frantzius estate. (Pr. Rec., 476.) Scott Brown, the agent of the Studebakers, afterwards told Marcuse that Clement Studebaker had written him, instructing him to give Marcuse the assistance he required and help him to get the new firm started. (Pr. Rec., 447.) Brown told him that this money was to come from Clement and George M. Studebaker. (Pr. Rec., 448.) In pursuance of this plan, Marcuse made arrangements for the purchase of the assets in the Probate Court, and each of these parties assigned their claims against Von Frantzius to Marcuse. (Pr. Rec., 474.)

Mr. Hoffman also testified to these facts, saying that the Studebakers, because of their position as creditors of Von Frantzius, were interested in Marcuse's suggestion of forming the partnership, and that "the result of these negotiations was the Hecht-Finn trust"; that "the interest of the Studebaker brothers was the protection of their claim against the Von Frantzius estate, possibly they could make it in full." (Pr. Rec., 674.) In this same connection, he spoke of the Studebaker brothers as being "the gentlemen whom I represent"; and, referring to the purpose of the original agreement for a limited partnership, in which he was to appear as special partner, said: "It was our desire to become lim-

ited partners if that served the purpose of recovering our claim against the Von Frantzius estate." (Pr. Rec., 683.) The two Studebakers and Regensteiner were thus personally interested in the formation of the new firm, and Zuncker was informed of its purpose. All of them knew that the enterprise could not be launched unless the other partners contributed in some way the special capital which was required.

On the other hand, Hecht and Finn could not go into the partnership unless the capital was contributed by the Studebakers, Vette, Zuncker and Regensteiner without whose contributions the firm could not be formed. Each person thus knew exactly who his associates were to be, and that he was a party to a mutual agreement among all for the formation of a limited partnership under the name of Marcuse & Company. This arrangement and the purpose to be accomplished is reflected in the original arrangement for the limited partnership made in April, 1917, in which the accomplishment of some of the steps in this program were made conditions of the delivery of the partnership articles. (Pr. Rec., 318.) The petition in the Von Frantzius estate for the approval of the contract under which this arrangement with Marcuse was to be carried out and the contract itself which Marcuse made, were offered in evidence. (Pr. Rec., 478-479.)

In addition to these facts, there were other related contracts having a bearing on the question whether all of the other respondents could fairly be exempted from liability, if it is imposed upon Hecht and Finn. For upon the hearing it was disclosed that there was a private agreement between Marcuse and Vette and Zuncker, unknown to their associates, or at least to Hecht and Finn. Written agreements, substantially identical in form, were made between Marcuse and Vette and

Zuncker, respectively, on March 28, 1917, which it will be observed was a few days prior to the signing of the original articles of limited partnership. These agreements recited that Marcuse had requested Vette and Zuncker to become special partners in the firm of Marcuse & Company, and that they had agreed to do so upon the execution of this contract. And in consideration of this and of their execution of the special partnership contract forming the firm of Marcuse & Company, it was agreed: first, that Marcuse within one year from the execution of the special partnership contract, on request of Vette or Zuncker and the tender of and assignment of their interest in the business of Marcuse & Company, would pay to them \$25,000 each (this being the amount of the special contribution of each), with six per cent interest, together with any profits that may have accrued to Vette or Zuncker from the firm, less payments made; and should thereupon indemnify Vette and Zuncker against all liability on account of the obligations of Marcuse & Company; second, that, if after the termination of the business of the partnership, Marcuse should continue in the brokerage business individually or in any new enterprise, Vette and Zuncker, upon contributing \$25,000 each, should be entitled to the same proportionate interest in the new enterprise by way of interest, payments and distribution of net profits, as he was entitled to in the firm of Marcuse & Company under the special partnership contract, the amount of their contributions to be proportionately reduced if the amount of the new capital was less than in the old firm. (Pr. Rec., 665-666.)

The agreement in this form was adapted to the organization of the partnership as first planned, in which all of these parties, including Hoffman, the representa-

tive of the Studebakers, were to sign as special partners. When the plan was changed these private contracts between Marcuse, Vette and Zuncker were renewed by documents in all respects similar which bear the dates of June 30 and July 1, 1917. These recited that Marcuse had entered into a special partnership in which Hecht and Finn were special partners; that the latter had executed and delivered a declaration of trust covenanting to hold their interest as special partners in trust ratably for the holders of certain trust certificates under the Hecht-Finn trust; that Marcuse had requested Zuncker, and the latter had agreed, to pay into the trust \$25,000 and accept certificates therefor. It then provided that in consideration of these facts Marcuse had agreed:

First. After April 1, 1918, on request of Zuncker and Vette and the tender and assignment of their respective certificates, to pay them respectively \$25,000 with interest at six per cent from April 1, 1917, with a ratable proportion to which the holder of the certificate should be entitled, in any profits which then had accrued to the trust, less whatever funds had been paid on the certificate.

Second. To fully and completely indemnify Vette and Zuncker against any and all liability on account of any obligations of Marcuse & Company.

Third. If, after the termination of the copartnership, Marcuse should continue in the brokerage business individually or in any new enterprise, Zuncker and Vette should respectively have the option of contributing \$25,000 to the new enterprise and having the same proportionate interest in it and in the net profits as he would be entitled to receive out of the business of the firm of Marcuse & Company. (Pr. Rec., 667-668.)

It thus was shown that both Vette and Zuncker, not only in connection with the original plan for the formation of the partnership, but in connection with the final form in which the plan was carried out, sought to protect themselves against the possibility of liability for the debts of Marcuse & Company and received from Marcuse a private indemnity against such liability, in which neither Hecht, Finn, nor, so far as the evidence discloses, Regensteiner or either of the Studebakers participated, and which was probably unknown to them. This indemnity was more general and inclusive in its terms with reference to the final form of the agreement than the first; for under the form first agreed on Marcuse was to indemnify Vette and Zuncker against liability in case he purchased their interest in the firm. (Pr. Rec., 666.) The indemnity in its final form obligated him to protect Zuncker and Vette against any liability for the debts of Marcuse & Company. (Pr. Rec., 668.)

THE PROVISIONS AND SCOPE OF THE HECHT-FINN TRUST AND
THE POWERS AND CONTROL WHICH IT GAVE TO THE PARTIES
INTER SESE.

Section 6 of the Hecht-Finn trust provides that the certificate holders should have no right, title or interest, direct, proprietary, or otherwise, in the partnership or in its property or assets, and that the legal and equitable right, title and interest therein should be vested in the trustees, Hecht and Finn. Construing this section in connection with other provisions of the trust, and especially those which fix the property which was the subject of the trust and constituted the trust fund, the following will be noted: The recitals of the agreement state that Hecht and Finn "by reason of their relation to the firm as special partners, are and will from time

to time become entitled to certain payments and distributions of the copartnership assets and the income, interest and profits of and upon said assets:" and that they "hold all and every their right, title and interest in and to the assets and the income, interest and profits of and upon the assets now or at any time belonging to the partnership," in trust. This expressly makes the interest of the special partners in the corpus of the property of the partnership, as well as in income derived from it, the subject of the trust; and shows that Hecht and Finn had no interest in it whatever except as trustees for the certificate holders, including themselves as such. It made them mere naked trustees; and it would be impossible in such a relation to exclude the interest which the certificate holders had in the trust fund and in the partnership of whose assets the trust fund thus constituted a most important part.

By Section 1 Hecht and Finn direct the partnership to pay to the Chicago Title & Trust Company for the account of the Hecht-Finn trust "all and any part or parts of the trust fund becoming at any time and from time to time payable or distributable to the trustees by reason of the articles of agreement aforesaid or by way of distribution of contributed capital upon any dissolution or accounting of such special partnership." (Pr. Rec., 26.)

Section 2 provides that the Trust Company shall distribute among the certificate holders the trust fund thus paid to the Trust Company in the proportions of their respective shareholdings. (Pr. Rec., 26-27.) The trust fund thus to be distributed includes both contributed capital and profits.

Section 3 gives the form of the certificates and provides that "by the acceptance of this certificate, the

holder hereof accepts said agreement (the Hecht-Finn trust, to which the articles of partnership were annexed), and becomes bound thereby in the same manner as if he had been named in and had executed the same." (Pr. Rec., 27.)

Section 4 provides that the profits to which Hecht and Finn, as special partners, are entitled, should be drawn out of the business and paid to the Trust Company at least twice a year. (Pr. Rec., 28.)

Section 6, to which we have referred, after providing that the legal and equitable title in the partnership property shall be vested in the trustees, provides that the interest of a certificate holder shall "consist solely of the right to receive his proportionate share of the net part or parts of the trust fund from time to time payable to the trust company herein, including the proportionate share of such holder of the corpus of said fund, upon any dissolution of said copartnership." (Pr. Rec., 29.)

The right of the certificate holders was not limited to proceeds arising from the partnership after they were segregated and separated therefrom, but was expressly impressed both upon income and the corpus which was payable to the Trust Company as trustee and included what was payable upon dissolution of the firm. Section 3 (Pr. Rec., 28) provides that the Trust Company should not be liable except for what is actually received from the trust fund, and should be under no obligation to take any active steps to enforce payment or delivery to it of any part of the trust fund.

Section 7 contained the ordinary provision in a trust deed securing bonds, which is designed to prevent a suit by one bondholder without reference to the wishes of the others, and to lodge the control of such a suit either in

the hands of the trustee or a majority of the holders. It provides that no certificate holder can sue for dissolution of the copartnership or relief against it, or to enforce distribution of the trust fund, and that such actions shall be brought by Hecht and Finn, the trustees. But it also provides that these trustees should be under no obligation to commence such a suit unless requested by a majority of the certificate holders, and properly indemnified; but that, if they do not comply with such a request, then any one or more of the certificate holders may bring such a suit in the name of the trustees or otherwise. (Pr. Rec., 29.) This recognizes that the certificate holders have an interest in the corpus and income of the partnership sufficient to entitle them to maintain such a suit, and that the provision referred to is a mere regulation to keep control in the hands of the majority. This control and right to bring suit was in the hands of the certificate holders other than Hecht and Finn; for Hecht and Finn were only two out of seven certificate holders and did not hold anything like a majority in amount.

This interest is again recognized by Section 5, which provides that the certificate holders shall, "without any interference by the trustees (Hecht and Finn), or by the general partners," have access to the books of the partnership, and be furnished with an annual inventory of the assets, profits, losses, and liabilities, and of all payments, disbursements, and everything done by the general partners; and in addition to this they were to have the monthly trial balances when received by Hecht and Finn. These provisions, taken as a whole, definitely recognize the interest of the other respondents in the partnership, and the superiority of their right and power to any possessed by Hecht and Finn. This document was prepared

by Mr. Hoffman and the attorney for the Studebakers. (Pr. Rec., 28-29.)

So completely did these instruments withdraw from Hecht and Finn any control over the trust fund which was the subject matter of the Hecht-Finn trust, that Marcuse & Company would not have been protected if they had paid to them the share of the profits earned by the special capital or had returned that capital to them. The contemporaneous document signed by Marcuse, Morris, Hecht and Finn on June 30th, annexed to the papers creating the Hecht-Finn trust, stated that these parties assented to the provisions of the Hecht-Finn trust, and on behalf of the partnership and as individuals "agreed to do or cause to be done any and all acts * * * necessary, proper or convenient * * * in order fully and effectually to carry out the terms and provisions of the agreement." (Pr. Rec., 32.) Thus, while Hecht and Finn in the Hecht-Finn trust are called trustees, their so-called trust position was so purely formal that a special covenant binding the general partners and themselves as special partners, not even to allow any part of the trust fund to come into their possession, was executed and made a part of the trust papers and the accompanying partnership articles.

It will be noted that the Hecht-Finn trust—as a separate and individual document—was not signed by the respondents Vette, Zuncker, Regensteiner and the Studebakers. But as reliance is placed upon all of the documents contemporaneously executed as parts of a single transaction, and upon the legal effect of the substance of the transaction, when treated as an entirety, we call attention to these interlocking provisions of the documents under which all of the respondents concededly obtained rights in contributing their money.

The partnership agreement was expressly made an exhibit of the Hecht-Finn trust "and a part hereof with the same effect as if in the body hereof set forth in *haec verba*." The trust agreement expressly names all of the respondents—assuming that Mr. Hoffman represented the Studebakers—as the persons to whom the original certificates shall be issued, and they were thus charter members in the association by name. The agreement expressly provided that by accepting a certificate the holder accepted the trust agreement and became bound by it in the same manner as if he had been named and had executed it. (Pr. Rec., 27.) And a part of these contemporaneous documents evidencing the agreement was that executed by Marcuse, Morris, Hecht and Finn agreeing on behalf of the partnership and themselves as individuals to the provisions of the trust agreement, and to do everything necessary to effectually carry it out. (Pr. Rec., 31-32.) This evidenced a written agreement with the respondents by name, in which the parties intended to eliminate any distinction in their mutual rights and relationships arising from the fact that each of the charter members did not sign all of the papers, without any one of which their contract would be incomplete.

BRIEF OF THE ARGUMENT.

I.**NONE OF THE RESPONDENTS WERE GENERAL PARTNERS
IN THE FIRM OF MARCUSE & CO., OR LIABLE TO CRED-
ITORS AS SUCH.**

The claim that respondents were general partners in the firm of Marcuse & Co. is based upon two statutes, the Limited Partnership of 1874 and that of 1917. It is contended that these statutes must be considered and applied to the facts both separately and in combination in order to destroy the protection which respondents would otherwise have.

We therefore refer to these statutes and the rights of the parties under them, both separately and in combination.

A.**THE ACT OF 1874.**

If the Limited Partnership Act of 1874 applies to the case, then Hecht and Finn are not liable as general partners; for the provisions of that law were duly complied with.

1. The certificate was in the form and filed in the office required by the statute.

2. It was not alleged in any pleading nor did the District Court find, that there was any false statement in the affidavit or any failure to comply with the law of 1874. The court merely held that the firm of Marcuse & Company was a general and not a special partnership, because the proper statutory steps were not

taken; and that the "so-called special partners," who were thus held to be general partners, included all the parties who had thus contributed to the special capital. (Pr. Rec., 689.)

3. The contention that the certificate was false and did not comply with the statute because it failed to state the names and contributions of the other respondents, merely begs the whole question. For it assumes that the other respondents were special partners, and that therefore their names should have been stated.

That such omission does not make the partnership a general one, see:

Crehan v. Megargel, 234 N. Y. 67 (76-7).

B.

THE STATUTE OF 1874 AS AFFECTED BY THE TWO STATUTES WHICH WERE PASSED, AND TOOK EFFECT CONTEMPORANEOUSLY IN 1917, VIZ., THE UNIFORM LIMITED PARTNERSHIP ACT AND THE UNIFORM PARTNERSHIP ACT.

1. Admittedly these parties intended to form a limited partnership under the statutory law of Illinois. The theory that their acts, although in compliance with the law in force and to which they were bound to conform, on Saturday, June 30th, ceased to protect them or to justify an act done on Monday, is that on the intervening Sunday a repealing act had taken effect which wholly nullified the law under which they contracted and paid their money, and not only rendered void but unlawful any act in accordance with that law.

The new statute was not a mere repeal and prohibition. It was a repeal by modification and substitution. It applied to the same subject matter, and was designed to relieve parties from the unjust hardships of which

this case furnishes such a glaring instance. Being remedial, it would be liberally construed, even if it did not so provide.

This is decided by the Supreme Court of Illinois, holding that statutes passed to secure uniformity in the law are not to be construed as perpetuating the laws which they are intended to displace, whether those rules result from prior statutes or decisions. On the contrary, they are to be construed with liberality, so as to prevent the continued application of those rules.

See *City Bank v. Bank of Republic*, 300 Ill. 103 (106-7).

This case involved the Uniform Negotiable Instrument Law. This principle accords with the decision of this court in

Commercial Natl. Bank of New Orleans v. Canal-Louisiana Bank, 239 U. S. 520 (526-9).

This decision involved the Uniform Bill of Lading Act.

2. When the Act of 1917 was passed there had been in force for many years in Illinois the statutory rule that a new statute should not in any way affect acts or rights under existing laws.

We quote the statute in full:

"No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform,

so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act."

Illinois Statutes, Chapter 131, Section 4.
(Passed in 1845.)

It would be contrary to this rule of construction to hold either:

That the contract and the rights of respondents, arising from that contract and the payment of their money on June 30th, were affected by the statute which took effect the following morning.

That creditors whose claims had not arisen on June 30th—for the firm had not then begun business—secured a right by the new law.

It is a fair, and not a strained, application of this statute to hold that renouncing any interest in the profits of a limited partnership, comes within the provision that "proceedings thereafter shall conform as near as may be to the laws in force at the time of such proceeding."

3. The statute of 1917, especially in the light of a declared principle of construction which had been in force for seventy years, shows an intention to preserve and not destroy right, and not to render ineffective acts done under and on the faith of the previous statute.

It provided that a limited partnership formed under the Act of 1874 should continue to be governed by that

law; and this provision is made a part of the repealing clause. The two sections are as follows:

"SEC. 30. *Provisions for Existing Limited Partnerships.* (2) A limited partnership formed under any statute of this State prior to the adoption of this act, until or unless it becomes a limited partnership under this act, shall continue to be governed by the provisions of an act entitled, 'An Act to Revise the Law in Relation to Limited Partnerships,' approved March 18, 1874, in force July 1, 1874, except that such partnership shall not be renewed unless so provided in the original agreement.

SEC. 31. *Act (Acts) Repealed.* Except as affecting existing limited partnerships to the extent set forth in Section 30, the act entitled 'An Act to Revise the Law in Relation to Limited Partnerships,' approved March 18, 1874, in force July 1, 1874, is hereby repealed."

The statute may thus be construed as continuing the old law in force at least for the purpose of allowing the parties to take the mere formal step of filing the articles of a partnership otherwise complete and ready for business.

Such construction is consistent both with its remedial purpose and with its express provisions (Section 28) that:

The rule of strict construction of statutes in derogation of the common law should not apply to it.

It should be construed so as to effect its general purpose to make uniform the laws of the states which enact it.

It should not be so construed as to impair the obligation of any contract existing *nor to affect any rights existing when the act goes into effect.*

The entire case of petitioners is based upon the contention that it did affect both the contract of respondents and their rights under it which existed before the

statute took effect. For in any view there was a contract between them on June 30th.

This purpose of the statute is also evidenced by its provisions that:

A limited partnership is formed where there has been substantial compliance in good faith with requirement of par. 1. (Section 2, par. 2.)

A false statement in the certificate shall create a liability only in favor of persons who suffer by relying upon it, and against the party who knew its falsity, when he signed the certificate, or learned of it in time to have it corrected before anyone acted in reliance on it. (Section 6.)

A limited partner is not liable as a general partner unless, in addition to exercising his rights as a limited partner, he takes part in the control of the business. (Section 7.)

One who has contributed to the capital of a business, erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner, a general partner in the firm or bound by its obligations, provided on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. (Section 11.)

The certificate may be amended to correct erroneous statements, or to make it accurately represent the agreement between the members. (Section 24.)

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. (Section 26.)

In any case not provided for in the act, the rules of law and equity, including the law merchant, shall apply. (Section 29.)

4. This construction of the law is fortified by the fact that the contrary construction is based upon a mere accident of time involving a few hours. June 30th fell on Saturday and the afternoon of that day being a legal holiday in Illinois, the county clerk's office was closed and the papers could not be filed until July 2nd, the day on which they were filed. The law usually contemplates that parties shall have an entire day to complete a transaction before a change in a statute will affect their rights. This principle can with fairness to all parties be applied to the mere formal step of filing a paper under such circumstances.

C.

THE UNIFORM PARTNERSHIP ACT OF 1917.

1. In construing these statutes both upon the question of a repeal of the Act of 1874, and the application of the new statutory law to existing partnerships, the Uniform Partnership Act of 1917 must also be considered. That act dealt with the general subject of partnerships, and was passed and took effect contemporaneously with the Uniform Limited Partnership Act, and is to be construed *in pari materia*. It defines a partnership as

“An association of two or more persons to carry on as co-owners a business for profit.” (Sec. 6.)

The same section (par. 2) provides:

“But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this act unless such association

would have been a partnership in this state prior to the adoption of this Act; but this Act shall apply to limited partnerships, except in so far as the statutes relating to such partnerships are inconsistent herewith."

It also provides (Sec. 7) that

"In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by Section 16 (relating to another matter) persons who are not partners as to each other are not partners as to third persons."

Petitioners' counsel claim that Marcuse & Co. was a general partnership by operation of the laws which took effect on July 1st; in other words, that it was the kind of an association to which the new Uniform (General) Partnership Law applied. By both the affirmative and negative provisions of that law an association is not a general partnership under the act unless it was a general partnership prior to July 1st. And the act deals with both general and limited partnerships, and that it shall apply to the latter unless the statutes relating to them are inconsistent with it. The provision that "those who are not partners as to each other are not partners as to third persons," is not inconsistent with anything in the limited partnership acts. On the contrary, it is consistent with the construction for which we contend.

These statutes, when construed together, show a plain intention to prevent a liability from attaching where the parties intend to form a limited and not a general partnership.

D.

UNDER THE LIMITED PARTNERSHIP ACT OF 1917.

1. If, by a rule of strict construction, it is held that no limited partnership was formed under the Act of 1874 because the certificate was filed in the county clerk's office on Monday instead of Saturday, then the statutes of 1917 should be held to apply. The fact that the parties intended to form a limited partnership under the law applicable to their purpose is still apparent and undisputed.

2. The papers were filed and the parties began business on July 2nd, the day provided in the articles, and at this time the new law was in force. If they are to be treated as affected with notice of the law, then they must be treated as intending to conform to the law in force at the time when they had provided the business should commence. And if they failed so to conform then they merely acted under an erroneous belief as to the effect of what they did.

3. The provision with reference to the formation of a limited partnership to engage in the brokerage business is not such as to make the formation of such a partnership void. Section 1 of the act defines a limited partnership and its effect as follows:

"A limited partnership is a partnership formed by two or more persons *under the provisions of Section 2*, having as members one or more general partners and one or more limited partners. The limited partners, as such, shall not be bound by the obligations of the partnership."

Paragraph 1 of Section 2 provides that those desiring to form a limited partnership shall sign a certificate stating fourteen things specifically enumerated, and file

this in the office of the recorder of deeds. Paragraph 2 of this section then provides:

“A limited partnership is formed if there has been substantial compliance in good faith with the requirements of *paragraph 1*.”

Paragraph 1 contains no provision about the brokerage business, though it does contain a complete statement of the steps which will result in the *formation* of a limited partnership. The only reference to the subject of the brokerage business is in Section 3, an entirely separate section. And that section does not deal with the *formation* of the limited partnership, but only with the business which it may carry on after it is formed. Its language is permissive not prohibitory. It does not limit the application of either Section 1 or 2 as to what shall *constitute the formation* of a limited partnership, nor of Section 11 which protects against the consequences of a mistaken belief as to its formation.

4. In view of all of these facts, and in the light of the rule of statutory construction to which Illinois had always been committed the Limited Partnership Act of 1917 cannot fairly be construed so strictly as to render unlawful the completion of a limited partnership in which all essentials were finished before the law took effect, and there remained only the formal filing in an office which was closed while the old law was still in force. Such a construction would in substance give it a retroactive effect.

5. The papers which were filed constituted a substantial compliance with the Act of 1917, and, therefore, by its express provision “a limited partnership was formed.” The only effect of filing the articles in the wrong office and engaging in the brokerage business, was to show an erroneous belief that “those contributing to the capital” of the business had so complied with

the law that "they were limited partners in a limited partnership." This would bring into operation Section 11 of the new act. Hecht and Finn fully complied with the provisions of that section by returning the money and renouncing their interest in the profits of the business.

II.

IF THE RESPONDENTS OTHERWISE WOULD HAVE BEEN LIABLE AS GENERAL PARTNERS, THEY WERE PROTECTED AGAINST SUCH LIABILITY BY THE ACT OF HECHT AND FINN IN REFUNDING THE MONEY WHICH HAD BEEN PAID TO RESPONDENTS BY THE FIRM AND RENOUNCING ANY INTEREST IN THE PROFITS OR OTHER COMPENSATION IN ACCORDANCE WITH THE STATUTE.

1. Section 11 of the Limited Partnership Act, 1917, provides as follows:

SEC. 11. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing (believing) that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

This was a remedial provision, designed to do away with the penalizing consequences which under former statutes and decisions had produced the unjust result of giving to innocent mistakes the consequences of imposing a liability never contemplated, either by the parties or by any creditor in trusting the firm.

The statute itself provides for its liberal construction. Sections 28-9 are as follows:

"SEC. 28. RULES OF CONSTRUCTION—(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This act shall not be so construed as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued *before* this act takes effect.

SEC. 29. RULES FOR CASES NOT PROVIDED IN THIS ACT—In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern."

Statutes passed to secure uniformity in the law are to be construed in this liberal spirit.

With reference to a similar statute (the Negotiable Instrument Law) the Supreme Court of Illinois said:

"The law was enacted for the purpose of furnishing in itself a certain guide for the determination of all questions covered thereby relating to commercial paper, and so far as it speaks without ambiguity as to any such question reference to case law as it existed prior to the enactment is more likely to be misleading than beneficial. If the provisions of the act harmonize with the general principles of commercial law in force before its enactment, those principles should be followed. But if the language of the act conflicts with statutes or decisions in force before its enactment, the courts should not give the act a strained construction in order to make it harmonize with earlier statutes or decisions. If this is done the very purpose of the act is defeated; in order to keep the law as nearly as may be uniform the courts of all the states should keep in mind the spirit and object of the law and should give to the language of the act a natural and common con-

struction, so that all might be more likely to come to the same conclusion."

City Bank v. Bank of Republic, 300 Ill. 103 (106-7).

To the same effect is the decision of this court in
Commercial National Bank of New Orleans v.
Canal-Louisiana Bank, 239 U. S. 520 (526-9).

2. Neither the language nor the spirit of the provision is limited to partnerships specifically organized under the new statute.

The statute itself deals both with limited partnerships organized under the old and the new act. This is true also of the Uniform General Partnership Act, which was concurrently adopted. The wording of the section is as broadly inclusive as could be devised. It does not say what may be done by a member of a limited partnership organized under any particular act, but gives the right to one who has contributed to the "Capital of a business conducted by a *person* or partnership erroneously believing," etc.

A business conducted by "a person" plainly could not, in a strict sense, be a limited partnership; and yet one who has contributed to the capital of such a business is expressly included within the protection of the statute.

No reason is suggested why a right thus given to prevent the accomplishment of injustice should not be enjoyed by anyone who comes within its description, irrespective of the particular statute which he had in mind and which produced his error, or even if he had no particular law in mind.

The remedial purpose of the law is defeated if it is not applied to a situation like that in this case, where the parties plainly *intended* to follow the law, even if

they made a mistake. The statute expressly applies to cases where there has been a mistake and not to cases where there was none. When there is no mistake the parties do not need the protection of the statute. When there is a mistake they need and are entitled to its protection.

As a prelude to a discussion of the decision of the Circuit Court of Appeals in this case, an editorial note in the *Harvard Law Review* (Vol. 36, 1016) uses the following apt language in discussing the reason for the insertion of this section in the new Uniform Limited Partnership Act:

“Formulating the rule that statutes in derogation of the common law must be strictly construed, American courts have generally treated questions of statutory construction in an unsatisfactory manner. Even the Uniform Acts have been subjected to the rigors of the rule; and no legislative reforms have suffered more than the Limited Partnership Acts. These acts were passed in almost every jurisdiction to modify the rule in *Waugh v. Carver*, then prevailing, under which sharing in the profits was adopted as a conclusive test of partnership. The courts were, however, unfortunately rigorous in the application of the strict rule of construction, and the effort to afford business men a new and attractive form of commercial association was practically nullified. To remedy this situation the Uniform Limited Partnership Act was drafted. To insure it against the fate of its predecessors, there was embodied, in Section 11, a novel provision for the protection of those who erroneously believe themselves to be limited partners, under which such persons are relieved from liability as general partners, provided that on ascertaining the mistake they promptly renounce their interest in the profits.”

The editor (Vol. 36, p. 1017) then discusses the interpretation of Section 11 in the opinion of the Circuit Court of Appeals now under review, in the following language:

“A recent case tests the efficacy of the section.

The statute, as adopted in Illinois, expressly provides that no limited partnership shall be formed in the brokerage business. The petitioners, unaware of the adoption of this act and of the repeal of the former Limited Partnership Act, which did not contain such a prohibition, attempted to form such a partnership. The court, one judge dissenting, felt that Section 11 should be given the broadest possible interpretation and held that the petitioners were within its protection. The soundness of this position becomes apparent when it is considered that this act abandons the categorical approach of the common law and finally recognizes, as the Civil Law has long recognized, that the classification of commercial relationship into (1) debtor-creditor, (2) partnership, and (3) corporation is inadequate to meet the needs of a complex industrial society. The legislature has recognized that no strong public policy requires that a person who contributes to the capital of a business, acquires an interest in the profits, and has some degree of control over the conduct of the business, become individually bound for the obligation of the business, provided creditors are not misled. Since Section 11 was purposely introduced to prevent such persons from being necessarily bound, it would seem to deserve an interpretation sufficiently liberal to cover the case."

3. The application of the statute is not defeated by the fact that the business to be carried on was a brokerage business. This was legal under the statute in force when the partnership contract was made and the capital paid in. The parties certainly would be justified in believing that the completion of the statutory steps by filing the papers on Monday would not render void all that was valid on Saturday. But if mistaken in this, it merely shows the existence of the error, which entitles them to the benefit of the statute.

We have pointed out, *supra*, that there is at least good ground for holding that the new statute does not prohibit the formation of a limited partnership for a brok-

erage business. But even if this view is erroneous, it again only illustrates an error into which persons might innocently fall. If they did so, Section 11 is designed to cover their case.

As the Court of Appeals well said in its opinion:

“Erroneous belief may be as to the nature of the business which may be organized into a limited partnership, as well as to any other matter of law or fact which induced the error.”

There is no special reason or policy for excepting brokerage from the operation of the statute. He who has made an innocent mistake under circumstances like those here shown, is as fairly entitled to protection upon complying with the statute as in any other business.

In any event, the creditors of such a business receive all they are entitled to from the person whose erroneous belief is the subject of the statute.

If any creditor of a brokerage or other business has relied upon false representations or has some special equity arising out of similar facts, he still has a claim against the person who has misled him. But this does not change the status of those interested in the firm or extend the right to all creditors equally. No special right of this kind existed against respondents, or in favor of any creditor of the firm.

5. The mistake in this case was of mixed law and fact, but even if it were a mistake of law, the statute would still apply. It neither specifies nor indicates any limitation upon the character of the mistake, but deals with the erroneous belief, whatever may be its cause.

The principle of equity which grants relief in cases of contracts affected by a mistake is not limited to mistakes of fact, but

“The fact that interpretation, or construction of

a contract presents a question of law and that, therefore, the mistake was one of law is not a bar to granting relief."

Philippine Sugar Estates Development v. The Govt. of the Philippine Islands, 247 U. S. 385 (389).

The Limited Partnership Act of 1917 states that in cases not provided for in the act, the rules of law and equity shall govern. This fortifies the conclusion that the principle of equity above referred to, especially in connection with the purpose of the statute, should be applied and thus that the character of the mistake should not be limited to one of fact.

6. The application of the statute cannot be denied because the parties adopted this form of contract in the belief that it would comply with the rules of the Stock Exchange. No fraud was intended, or committed, on the Stock Exchange, or any of its members. And in any view, its equities and the rights of its members are neither involved nor asserted in this case and cannot be made the ground of a decision between creditors of the firm and respondents.

7. The money paid by Hecht and Finn was sufficient in amount to comply with the statute. No claim was ever made until petitioner's brief was filed in this court, that the amount was insufficient if the statute applied. There was no evidence that any dividend was paid upon the old claims against the Von Frantzius estate. The evidence clearly shows that the payment included all that had been received, with interest thereon. (Pr. Rec., 654-655.) The opinion of the Court of Appeals expressly states that it was conceded in that court that the payment was sufficient in amount if the statute applied.

8. The payment of money was made in this case as a

matter of caution and from a desire to comply to the fullest extent with the spirit as well as the letter of the law. It may be strongly contended that such payment is not necessarily required by the language of the statute. All that it requires is that the person who acted under an erroneous belief shall "on ascertaining the mistake promptly *renounce* his interest in the profits of the business, or other compensation, by way of income."

9. The protection of Section 11 cannot be withheld from respondents because the action under it by Hecht and Finn was taken after the insolvency of the firm.

The statute applies to those who have made a mistake and calls for action by them only when they have discovered the mistake. It is undisputed that neither Hecht, Finn or any of the respondents, or any of the creditors, discovered this mistake, or the situation out of which it arose until the bankruptcy proceedings were begun. (Pr. Rec., 654-656.)

It is an extreme construction to hold that the mere word *renounce* creates a statutory requirement that the renunciation must be accomplished by payment of money. This would make it the equivalent of "renounce and return."

Hecht and Finn, to avoid even the appearance of withholding any part of that which all respondents had unitedly received, paid the full amount. This certainly went to the limit of the rights of creditors, and of the obligations of respondents under this statute.

III.

**THE RENUNCIATION AND REFUND BY HECHT AND FINN
PROTECTS THOSE TWO RESPONDENTS EVEN IF IT DOES
NOT LEGALLY HAVE THE EFFECT OF PROTECTING THE
OTHER RESPONDENTS.**

The other respondents contended in the Court of Appeals that they were entitled, under Section 11 of the Limited Partnership Act, to the benefit of the renunciation and refund by Hecht and Finn of the money which had been paid by the partnership.

On the other hand, it was contended by the petitioning creditors that the other respondents could not claim the benefit of the act of Hecht and Finn, because they refused to join in the contribution, or to authorize either the payment or the renunciation by Hecht and Finn as being done on their behalf. We joined in this contention of the other respondents in the court below.

It is our view of the law that because of the position which Hecht and Finn occupied the renunciation by them and the return of all of the money that had been paid to all the contributors to the capital of Marcuse & Co. other than the general partners, was such full compliance with the law that it should fairly be held to enure to the benefit of the other respondents and protect them from liability. This was the view taken by the Court of Appeals.

But if the view of petitioners is sustained that the other respondents are not entitled to the benefit of an act in which they refused to join, this does not detract from its effect as a protection to Hecht and Finn.

The law does not require that all shall join in such an act or that one shall return the money received by

others. It would be contrary to its purpose and spirit to hold that if one man who erroneously believed that he was a limited partner refused to join with another, either in the renunciation or payment, the accomplishment of the statutory purpose would be nullified. Each man is entitled to the benefit of the statute and if he renounces all his right and pays all the money which every one has received, he certainly is entitled to protection.

IV.

THE ACCIDENTAL CHAIN OF CIRCUMSTANCES RELIED UPON BY PETITIONERS CANNOT HAVE THE EFFECT OF CREATING A RELATION WHICH NO ONE EVER INTENDED, OR OF GIVING TO CREDITORS THE BENEFIT OF AN OBLIGATION WHICH THEY NEVER EXPECTED TO ENJOY.

BUT IF IT IS HELD THAT A STRICT CONSTRUCTION OF ARBITRARY RULES MUST BE ADOPTED AND APPLIED, AND THIS RESULTS IN IMPOSING SUCH A LIABILITY, THEN THE RUINOUS CONSEQUENCES SHOULD NOT BE APPLIED TO HECHT AND FINN ALONE. IF ON THESE FACTS HECHT AND FINN WERE GENERAL PARTNERS IN THE FIRM OF MARCUSE & CO., ARE NOT PROTECTED BY THEIR REFUND UNDER SECTION 11 OF THE ACT OF 1917, AND ARE LIABLE AS SUCH IN THESE PROCEEDINGS, THEN THE SAME LIABILITY TO RESPOND FOR THE LEGAL EFFECT OF A COMMON ENTERPRISE SHOULD BE IMPOSED UPON THE OTHER RESPONDENTS WHO WERE THEIR ASSOCIATES IN THAT ENTERPRISE.

1. If Hecht and Finn are held liable it will be upon the theory that contribution to the capital of a partnership, with the right to share in its profits, creates a relation to which the law attaches a liability for debts,

unless such liability is prevented by the operation of a statutory limitation. It is based upon that theory by petitioners, and every part of their argument involves it. If that principle applies to the case, then Vette, Zuncker, Regensteiner and the Studebakers also come within its operation.

2. The District Court found as a fact that these men "selected Hecht and Finn as the agents for the operation of the special partnership by and through Hecht and Finn." (Pr. Rec., 689.)

3. The petition to review did not, in its assignments of error in the Court of Appeals, challenge the correctness of the District Court's determination of this fact. (Petition, 27-30.)

4. The District Court's finding on this question of fact is supported by the evidence. (Testimony of Regensteiner, Pr. Rec., 428-429; Marcuse, Pr. Rec., 464-465-467-471-472.)

5. The question as to the character of the Hecht-Finn trust and whether it is a trust or a partnership, is to be determined by the law of Illinois. The character and effect of such an association under the laws of Massachusetts, either as settled by the decisions of that state or of the federal courts, is not controlling.

6. It has been held in Illinois that voluntary associations for profit are partnerships unless formed under a law limiting the liability of members.

It is also held that a joint stock company in which the members hold certificates evidencing their interest in the assets and profits is a partnership in which all are held liable as partners.

In one of the earliest decisions on this subject in Illinois the transaction was in the form of a trust.

Robbins v. English, 24 Ill. 387 (426).

This case, and the rule which it lays down, has been followed in subsequent cases.

People v. Rose, 219 Ill. 46 (60).

People v. Brander, 214 Ill. 26 (30).

Fougner v. First Natl. Bank, 141 Ill. 124.

Pettis v. Atkins, 60 Ill. 454.

See, also, 5 Corpus Juris, p. 1363 "Associations."

The association formed by the Hecht-Finn trust has those elements of a partnership which if some of the members are liable to creditors impose the liability upon all. Each of the certificate holders who associated themselves together contributed to its capital, and each had a share in its management proportionate to his interest, and shared in the profits on the same basis. The losses also were shared in this manner, for the united capital was placed at the hazard of the business. Hecht and Finn were members of the association as certificate holders, but had no interest or power greater than that of the other certificate holders. The power over the affairs of the firm or the trust fund was effectively withdrawn from them, and they stood as mere naked trustees, not having even custody of the fund, or the right to its custody.

The trust began with the partnership of Marcuse & Co., was limited to the term of its existence, and covered nothing except the interest in that business created by the contribution of special capital. It was what the authorities call "a business venture," or "joint venture." It is essentially different from the so-called "Massachusetts trust" in which property is conveyed to a trustee, and he is by the trust itself given the right of management, as well as possession.

7. The liability of the other respondents jointly with Hecht and Finn, if the latter are liable, does not rest

upon the proposition, nor involve the result, that by forming the trust all of the associates *ipso facto* became liable, as partners in the firm of Marcuse & Company, to its creditors. Nor does it conflict with the proposition that there may be a subpartnership by an agreement to share the profits which are individually received by a partner. It rests upon the proposition that the Hecht-Finn trust, as created in connection with the formation of Marcuse & Company, was itself an association of these men; and that its liabilities, as a separate entity, rest equally upon those who created it, who contributed to its capital; who shared in its profits and who shared proportionately the losses represented by an impairment of that capital; and who had a right to share proportionately with Hecht and Finn in the management of this association or subpartnership. If a liability was incurred in the prosecution of the enterprise represented by this association or subpartnership, it was a liability of the association and all of its members and not an individual liability of either Hecht or Finn.

If, therefore, the court reaches the conclusion that Hecht and Finn are not protected against liability by the Limited Partnership Act of 1874, or by the Uniform Partnership Act and Uniform Limited Partnership Act of 1917, and that they are liable to creditors because of this contribution to the capital of Marcuse & Company and the right to share in its profits, then this liability is to be imposed upon the entity representing the associates whose united capital was thus contributed, and whose joint right to share in the profits is thus made the basis of liability. For the acts or omissions which create the liability are the acts or omissions of all, and not of Hecht and Finn alone.

If, as petitioners contend, the Hecht-Finn trust is held to be in substance such an association that it is to be

treated as a partnership, whether it be regarded as a subpartnership or not, then there is no limitation upon the liability of its members for its obligations. It is not a limited partnership and the liability of each member for whatever comes within the scope of its business is, therefore, unlimited. Therefore, if the barrier which we contend protects Hecht and Finn from liability, is passed over, no liability can be imposed upon one of these associates which is not to be shared by all.

8. Here Hecht and Finn are expressly stated to be the trustees of their associates, and the general partners were to conduct the business on behalf of all.

Petitioners' counsel assert that Hecht and Finn were the agents of the other respondents, and not really trustees. But whatever word is used the fact remains that they were the representatives of all in signing the partnership articles. If that act makes them liable, the consequences of the act cannot in fairness be limited to them to the exclusion of those for whom they acted.

9. We are now dealing with the question of the liability of the associates of Hecht and Finn, if, and only if, the latter are held liable. We do not contend that this association—or subassociation—*ipso facto* creates a liability for the debts of Marcuse & Company. Our point is that if such a liability has been incurred it results from the united act of all the associates in connection with the purpose of the association, and not from the individual act of Hecht and Finn; and that therefore the liability must rest, if at all, equally upon all who were thus associated together.

10. Where several parties are liable by contract—and that is the petitioners' claim in this case—all must be joined in any action upon it, if more than one is sued.

Even when the contract is joint and several, this rule

applies. The plaintiff may treat the contract as several and sue one party alone; but if, as in this case, he elects to treat it as joint by proceeding against more than one, he must join all, and cannot proceed against an intermediate number.

This is the established rule in Illinois.

Cummings v. The People, 50 Ill. 132 (135).

Tandrup v. Sampsell, 234 Ill. 526 (531).

Wisner v. Catherwood, 225 Ill. App. 471 (473-474).

The Illinois statute provides that:

"Except as otherwise provided in this Act, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants."

Chapter 76, Section 3, Illinois Statutes.

This statute has been construed not to apply to partnerships so as to change the character of their obligations. Therefore if a creditor sues one partner without joining the others and recovers judgment, they are discharged from liability.

Fleming v. Ross, 225 Ill. 149 (151-2).

A partnership obligation being a joint obligation, however, and not a joint and several obligation, all persons who were partners in the firm at the time when the contract was made must be joined in an action to enforce payment unless there be a legal excuse (such as death or discharge in bankruptcy of one or more of the partners) for not joining them. Where this fact of nonjoinder appears on the face of the declaration, the partners sued may avail themselves of that fact on error to defeat a right of recovery.

Sinsheimer v. Skinner Mfg. Co. 165 Ill. 116 (123).

Also where a plaintiff joins more than one of several joint obligors, he must recover against all or none; and a judgment against one defendant, though he be in default, and in favor of the others, will be reversed even when plaintiff appeals.

Kingsland v. Koeppe, 137 Ill. 344 (346).

Therefore, if a liability is created by these contracts it must be enforced against the other respondents, if it is enforced against Hecht and Finn.

This rule would apply with special force to a bankruptcy proceeding against an alleged partnership.

11. Every consideration of equity and fair dealing as between these respondents calls for the application of a united liability, if Hecht and Finn are held liable. And this is emphasized not only by the fact that Hecht and Finn were put forward one step in advance of their associates in the framework of the papers—and for the common benefit of all—but also by the fact that they alone paid the money and made the renunciation which gave the statutory protection. Their associates refused to join in or to authorize the payment or the renunciation of interest, yet claim the benefit of the act as one done in connection with the common enterprise, and therefore enuring to the benefit of all. We do not seek to deprive them of that benefit. But we do contend that the logic of moral fairness requires that they do not evade but respond to the legal consequences of the acts in which they did unite with Hecht and Finn.

ARGUMENT.

All of the respondents agree in contending:

That neither Hecht and Finn, nor the other respondents were general partners in the firm of Marcuse & Co.

That even if it should be held that they were such partners, the action taken by Hecht and Finn in renouncing all interest in profits, etc., and returning what had been paid, protected all the respondents under Section 11 of the Uniform Limited Partnership Act.

In our Brief of the Argument *supra*, we have stated the points upon which we rely upon those basic propositions in the case. We therefore confine the argument in this brief to the questions as to what should be done, if all of these questions are decided in favor of the petitioning creditors and it is held that Hecht and Finn were general partners.

IF HECHT AND FINN ARE HELD TO BE LIABLE AND NOT TO HAVE THE PROTECTION OF THE LAW OF 1917, THEN UNDER THE RULE THUS ESTABLISHED VETTE, ZUNCKER, REGENSTEINER AND THE STUDEBAKERS ARE EQUALLY LIABLE.

We contend that the old rule, against the practical injustice of which the Uniform Limited Partnership Act is directed, cannot be applied to this case for the purpose of penalizing any of these parties with personal liability for the debts of Marcuse & Company. But, if the court holds otherwise and applies it, then we contend that both legal logic and legal fairness unite in requiring that its application be not limited to Hecht and Finn, but be extended to include those who were associated with them in creating the situation out of which the liability arose.

In the first place, we submit that to so hold is but to

apply two principles well settled in Illinois, relating to joint liabilities, and to partnership debts.

Where an obligation is joint and several, the creditor has the right, when he proceeds to enforce it, to treat it as several and proceed against one obligor, or to treat it as joint and proceed against all. But he cannot proceed against any intermediate number, but must join all if he proceeds against more than one.

Cummings v. The People, 50 Ill. 132 (135).

Tandrup v. Sampsell, 234 Ill. 526 (531).

Wisner v. Catherwood, 225 Ill. App. 471 (473-474).

In the application of this rule it has been held that the statute of Illinois providing that

“All joint obligations and covenants shall be taken and held as joint and several obligations,”

does not apply to partnerships. And it was therefore held that if a creditor sues one partner without joining the others and recovers judgment, the common law applies and the judgment is a bar to a subsequent action against the other partner.

Fleming v. Ross, 225 Ill. 149 (151-2).

A partnership obligation being a joint obligation however and not a joint and several obligation, all persons who were partners in the firm at the time when the contract was made must be joined in an action to enforce payment unless there be a legal excuse (such as death or discharge in bankruptcy of one or more of the partners) for not joining them. Where the fact of non-joinder appears on the face of the declaration, the partners sued may avail themselves of that fact on error to defeat a right of recovery.

Sinsheimer v. Skinner Mfg. Co. 165 Ill. 116 (123).

Also that where a plaintiff joins more than one of several joint obligors, he must recover against all or none; and that a judgment against one defendant, though he be in default, and in favor of the others, will be reversed even when the plaintiff appeals.

Kingsland v. Koeppe, 137 Ill. 344 (348).

These rules of procedure have been changed by statute in many other states, but they still obtain in Illinois.

They are not rules enforced merely for the benefit of the plaintiff, but involve rights existing in favor of the defendant. He can raise the question of non-joinder, and is interested in having a joint adjudication, if only because of his right of contribution against those who were associated with him in the contractual relation out of which the liability arises.

These principles apply with special force to a bankruptcy proceeding. The petitioning creditors could not, if they wished, limit such a proceeding to a few of the partners; but are bound to join all, in order that there may be a complete adjudication such as the Bankruptcy Act contemplates. Therefore, if by the legal effect of these documents when construed together, all our other points are overruled, and the contention of the petitioning creditors that Hecht and Finn are general partners, is sustained, it seems to follow that all who were associated with them in the contractual relation which those documents create are necessary parties and should be subjected to the same liability. Of course, if it is held that Hecht and Finn are not liable, the points presented in the following argument become academic.

The case of the petitioners against Hecht and Finn is in its substance based upon the relation which petitioners claim was established with the other respondents by the united effect of all the documents into whose ex-

ecution all of the respondents joined. For the purpose of orderly consideration, we present an analysis of the different parts of the sequence of events out of which the liability arose, if at all, and upon which the petitioners rely to establish their case, and the other respondents rely for individual protection.

THE RELATIONS OF VETTE, ZUNCKER, REGENSTEINER AND
THE STUDEBAKERS TO THE TRANSACTION WHICH CREATED
THE LIMITED PARTNERSHIP OF MARCUSE & COMPANY AND
THE HECHT-FINN TRUST.

It must be admitted by all parties that if any of those whom the petitioning creditors seek to charge with liability for the debts of Marcuse & Company are to be so held, it cannot be based upon provisions recognizing such liability in any document connected with the transaction. Every document in the series relied upon expressly repudiates the idea of such liability. If the court reaches the conclusion that this liability exists, it must first decide that the express provisions of all these documents, the intention which they express and the terms of the contract which they evidence, must be disregarded; that a controlling principle of law overrides both the form of the document, the terms of the contract and the intention of the parties; and that by the substance of the transaction itself a situation was created in which the law imposes the liability irrespective of the intention of the parties. If the court thus holds that it is to regard all these papers as mere forms and instrumentalities in the creation of a situation to which the law itself attaches the liability, then we submit that the form of papers, which are thus disregarded for the main purpose, cannot be used to penalize Hecht and Finn and free from the liability thus imposed upon them those who

united with them in the transaction out of which the liability arises.

This view seems more clearly to be a just one when it is considered that Hecht and Finn could not possibly derive from the transaction a benefit not shared by all the others, and were mere naked trustees having no right even to collect either the capital or the profits which were to be distributable to the special partners. And this is emphasized by the further fact that the \$46,000 which was paid to the receiver in compliance with the statute, was paid entirely by Hecht and Finn, without contribution from these other parties, although it represented the money which they received; and that they now claim the benefit of that payment as protecting them from liability. The statute of 1917, upon whose provisions counsel for the associates of Hecht and Finn rely for exemption—because Hecht and Finn paid back the money which these associates received,—itself provides that cases not expressly provided for in it “shall be governed by the rules of law and equity.” It would be plainly inequitable to allow these parties to put off upon Hecht and Finn—even if they sought to do so,—this ruinous liability, while claiming the benefit of their acts, and the right to keep the profits which they had received and which Hecht and Finn thus paid back.

In the Circuit Court of Appeals the other respondents successfully contended that they were entitled to the benefit of the act of Hecht and Finn because as it discharged those two, it also discharged the others, although they did not participate in the act. As the record stands, unless this act of Hecht and Finn applies to them and binds them, they have still all their right against the partnership and its profits which they ever had, unimpaired by any action of theirs. We do not deny that this

action of Hecht and Finn should inure to their benefit and give them protection against this liability; but we do insist that this can only be done upon a theory consistent with legal logic and with the principles of fairness which underlie such a transaction.

But the right of the other respondents to the benefit of this act must arise from the fact that there was among these parties a joint association in which the act of one, in connection with the enterprise, was in substance the act of all, which would inure to the benefit of all, and of which the person performing the act could not claim an individual benefit. The act of Hecht and Finn, though done with their individual funds, must nevertheless be regarded as an act of the association in which all of these persons were jointly and proportionately interested. Whether this association is called, as between the members, a partnership, or subpartnership, is not decisively material. It was an act which Hecht and Finn had the right to perform even if their associates refused to join in it. But it was done under Section 11 of the Act of 1917 in pursuance of either a duty, or a right, arising out of the application of that statute to the situation created by the Hecht-Finn trust, and the relation which that trust had to the partnership, whose articles were contemporaneously executed in order to make the trust possible. It, therefore, was an act of this association in the interest of all jointly. And certainly those who thus claim the benefit of it, must do so consistently with its purpose. They certainly come within the description in Section 11, "A person who has contributed to the capital of a business." And it is only by adopting the act of Hecht and Finn as bringing the petitioners under the protection of this section, that they can claim its benefit. And if compliance with this provision operates as a protection to Hecht and Finn

from a liability which otherwise might be imposed upon them—and we confidently assert that in any view of the case it does so protect them—then it would discharge the other members of their association only upon the theory that they were under a joint liability, and that thus, by the ordinary rule, a discharge of one could operate as a discharge of the others.

If the court proceeds on the theory that contribution to the capital of a firm, and the right to share in the profits distributable upon the capital thus contributed, creates in favor of creditors a liability for debts, then by the substance of this transaction that principle imposes upon the associates of Hecht and Finn the same liability which is imposed upon them. The logic and fairness of this is more clearly seen when we compare the transaction in its initial form and substance, with its final form. For we can then see whether there is any real contrast in the substance of those elements upon which the claim that this was a general partnership must rest.

THE INITIAL ARRANGEMENT FOR A LIMITED PARTNERSHIP.

Early in 1917 it had been agreed that a special partnership should be formed under the laws of Illinois, in which Marcuse and Morris were to be general partners, and Finn, Hecht, Hoffman, Vette and Regensteiner were to be special partners. So definitely was this agreed upon that the papers for the formation of a partnership were not only prepared but actually signed by all of these persons. The Studebakers themselves did not sign the document; it was, however, signed by Mr. Hoffman, who was their attorney. He had no interest in the matter himself, was not, himself, to contribute the money, but was acting as a mere naked trustee for the Stude-

bakers, whose money was to be used. (Hoffman's testimony, Pr. Rec., 670-681; Brown's testimony, Pr. Rec. 534.)

That the money was to be drawn from the funds which the Studebakers had in the Studebaker trust merely deals with the depositary from which they were to draw the money, leaving untouched the fact that it was their money which Mr. Hoffman was to use, and that to them would inure the benefit from contributing it to the capital of the firm. And the Studebaker Trust was a mere convenience of theirs for the handling of their funds.

The substance of the transaction, as thus planned, if carried out, would have been that each of these parties contributed his money as special capital in the firm of Marcuse & Company under papers which, on their face, would have kept him free from any personal liability, but would have subjected his contribution to the hazard of the business, and would have secured to him the profits which the capital earned, and the return of the capital upon dissolution. No one of them would have personally participated in the management of the business; they would, however, have had such rights of accounting, etc., against the firm as are inherent in an association of this kind.

The change in the transaction did not involve an abandonment of its substantial features above stated, by which each of these persons was to contribute special capital to the firm of Marcuse & Company, but only the form under which the contribution was to be made. The reason for the change, and its character demonstrate the continuity of the substance of the plan instead of a change in it. The evidence shows that but for the rule of the stock exchange which prohibited a special part-

nership with more than two special partners, the transaction would have been carried out in the exact form in which the document was executed; for no other reason was given for changing the papers. (Pr. Rec., testimony of Regensteiner, p. 442; Marcuse, pp. 458, 460, 464, 465; Zuncker, p. 397; Hoffman, p. 681; Finn, p. 257.) The change of the plan, therefore, was one which was designed to be a formal one, by eliminating all of the names except two from the list of special partners. The same people were to contribute their money as special capital; were to put it at the hazard of the business, and were to receive the profits distributable upon it, and the return of the capital upon dissolution; and this was to be done under documents which all understood and intended would—like those of the original form of the plan—free them from personal liability, and keep them from having any active participation in the affairs of the firm.

There was thus in the purpose and in the understanding of all parties a perfect identity between the transaction, and the effect of the transaction, in its initial and final forms as to the following elements which covered everything but the form of the papers.

Contribution to the capital of Marcuse & Co.

Placing this capital at the hazard of the business.

Sharing in the profits in proportion to the capital contributed.

Payment by the partnership of the profits distributable upon the contribution of each contributor, not to Hecht and Finn but to the contributor himself through an agency authorized by him to collect it and pay it to him.

Exemption of each contributor from personal liability.

That the original partnership papers were not finally delivered but were held in escrow for the performance of certain conditions does not affect the comparison between the substance of the transaction when initiated and when finished.

We have pointed out that in the initial transaction the Studebakers did not join in person, but were represented by Mr. Hoffman, who stood as a mere naked trustee for them in the contribution of their money. But no such formal representative intervened between Vette, Zuncker and Regensteiner, and they were personally to participate in the transaction from the start. And in the petition to the Circuit Court of Appeals, Studebaker joined with Vette, Zuncker and Regensteiner in the presentation of the case, and, in substance, their rights were put forward as being identical. And it is a fact of marked significance that Mr. Hoffman, testifying in answer to the questions of the District Judge with reference to his own understanding as to the result produced by the change in the papers by which Hecht and Finn alone appeared as special partners, in order to comply with the rule of the exchange, said that he understood that the liability of Hecht and Finn would not be any different from that of himself, Vette, Zuncker and Regensteiner. (Pr. Rec., p. 687.)

THE FORM AND SUBSTANCE OF THE FINAL TRANSACTION OF
JUNE 30, 1917.

In comparing its final form with the original plan, we should expect to find, if there is an identity in substance as the parties view it, (a) that the money was thus contributed by each to the special capital of the firm with the right to participate in its profits; (b) that Hecht and Finn, whose names were to be used as special part-

ners, had no greater right or power because of that fact; and (c) that the other contributors had at least substantially as much power as Hecht and Finn in the enterprise in which they were associating their capital as they would have had under the form of the plan as originally contemplated. Upon this last element it is important to bear in mind that if these parties, as holders of certificates under the Hecht-Finn trust, had a greater, or more direct, power than they would have had under the original plan, it brings them closer to the line of responsibility than the original plan would have done.

The documents by which this change was to be effected were prepared as parts of one plan, were contemporaneously executed, and were so interlocking and interdependent that under the ordinary rules of law they are to be construed together. They consist of the partnership agreement dated April 2, 1917, and executed on June 30, 1917, between Marcuse and Morris as general partners and Hecht and Finn as special partners; and the document known as the Hecht-Finn trust dated and executed June 30, 1917, of which the articles of partnership are expressly made a part; and the agreement of Marcuse, Morris, Hecht and Finn binding themselves and the form to carry out the arrangement.

THE ARTICLES OF PARTNERSHIP.

These provided, among other things, for the keeping of books by the general partners and the right of access and examination by the special partners or their nominees; for the rendition of yearly accounts of the affairs of the firm to the special partners as well as a monthly trial balance. The special partners could name auditors for the examination of the firm's affairs; and on report

could call for the dissolution of the firm. Upon the death of Marcuse the affairs of the firm were to be liquidated by an appointee of the special partners, and if they were unable to agree on a liquidator the Chicago Title and Trust Company was to appoint him. If either of the special partners died, the other succeeded to all his rights as though the survivor had contributed all of the special capital. If both died, the majority of the certificate holders were to designate a person to act as the successor of the special partners, and he was to have all the rights and powers of the special partners.

THE HECHT-FINN TRUST.

This document was signed by Hecht and Finn declaring the trust, and by the Chicago Title and Trust Company accepting the appointment as trustee under it. It was also signed by Marcuse, Morris, Hecht and Finn to evidence their consent to be bound by its provisions and to do everything required to effectuate its purpose.

It recited the provisions of the agreement forming the special partnership and made them a part of it; that Hecht and Finn jointly, as trustees, held every right and interest in the assets and profits of the partnership as a trust fund, and this interest in the assets, profits, etc., is referred to through the instrument as constituting the trust fund.

Nothing which might become due from the partnership to Hecht or Finn was to be paid to them, but everything was to be paid to the Chicago Title and Trust Company as trustee; and that company was to distribute all that it thus received among the certificate holders proportionately. The form of the certificates of interest under the trust expressly stated that they were subject to all the terms, etc., of the trust agreement; and that

each certificate holder, by the acceptance of the certificate, accepted the agreement and became bound *in the same manner as if he had been named in and had executed the document itself.*

It will thus be seen that there was absolutely withheld from Hecht and Finn the right to receive any money from the firm of Marcuse & Company even to the extent that the partnership articles on their face provided; that this money was to be paid to the trust company alone; and, in addition to this, that each one of the certificate holders specifically agreed that by accepting his certificate he stood in exactly the same relation as if he had signed the agreement of June 30th, which Hecht and Finn signed and of which the articles of partnership were specifically a part.

The trust agreement specified the contributions made by each of these parties by name, Richard Yates Hoffman, the representative of the Studebakers, being in the list. The amount of their contributions as stated footed up the exact sum which Hecht and Finn were stated in the articles of partnership to have contributed to its capital. It further provided that the profits to which Hecht and Finn, as special partners, might be entitled should be drawn out and paid to the trust company at least twice a year.

It gave to the certificate holders, "without any right of interference by Hecht and Finn or the general partners," the right of access to the books of the firm, and the right to have an annual inventory of its affairs and a monthly trial balance of its accounts. It provided that Hecht and Finn might select auditors for the business, but that they should revoke such appointment and appoint anyone named by a majority of the certificate holders. Upon a report by the auditors that the

business was not being safely or properly conducted, Hecht and Finn were bound, upon the written direction of a majority of the certificate holders, to take proceedings to procure a dissolution of the partnership. The certificate holders were to have no proprietary rights in the partnership or its property, this right being vested in Hecht and Finn as trustees, and the certificate holders were not to be construed as having assumed any liability with respect to the trust or the partnership. No certificate holder was to have a right to bring a suit in his own name for the dissolution of the partnership or to enforce distribution of its funds, but such suits were to be brought by Hecht and Finn. If upon request by a majority of the certificate holders and receiving indemnity, they refused to bring such an action, then the certificate holders could maintain it in their own name or in the name of the trustees. Hecht and Finn were not, either by the terms of the trust agreement or of the partnership agreement, to become personally liable except for individual and intentional acts or omissions. They were to be entitled to reimbursement for expenses and disbursements in connection with the administration of the trust and the performance of their duties thereunder. Upon the death of either Hecht or Finn, the survivor was to succeed to all the rights, duties and obligations as special partner, and in the event of the death of both, a majority of the certificate holders were to designate a successor acceptable to the general partners, and he should thereby become a special partner in the firm in place of the decedents. If the Chicago Title and Trust Company resigned as trustee, a majority of the certificate holders were authorized to appoint its successor.

By the direct agreement of the parties, the control of the matter was withheld from Hecht and Finn, who did

not have even the right to receive the profits distributable upon the special capital, nor any part of the trust fund of which they were nominal trustees. They were only two out of the six or seven persons thus associated together, and held less than a third of the "certificates of interest," a majority of which controlled the enterprise. From the very start Vette, Zuncker, Regensteiner and the Studebakers held a control against which Hecht and Finn were powerless.

The decision of this branch of the case does not depend upon a technical answer to the question whether the members of a "subpartnership" can be made liable for anything beyond the debts of that particular subpartnership; or whether the beneficiaries of such a trust can be held liable for debts not incurred by the association itself as such. Here if Hecht and Finn are held liable, it will be because of acts and documents which were the united act of all, and in the framing of which Hecht and Finn had no more creative influence than anyone else.

Nor is it decisive in favor of exempting the other respondents from liability that the documents provided that the holders of certificates under the Hecht-Finn Trust should incur no liability.

This, we submit, touches no more than the surface of the transaction. The Hecht-Finn trust, which was a mutual agreement between all of these parties, did provide that the certificate holders should not, by accepting the certificates, be construed to have assumed any liability with respect to the trust or the copartnership. (Sec .6, Pr. Rec., p. 29.) This provision, therefore, would be just as effective to protect Hecht and Finn as certificate holders from liability as it would to protect their associates. But this is not the only provision. Section

8 provides that Hecht and Finn, as trustees, should not, by reason of the trust or the articles of partnership, become personally liable on account of anything done or omitted to be done, with the exception that each should be liable personally for injury resulting from his own willful act or omission. (Pr. Rec., p. 30.) Thus there were two provisions exempting Hecht and Finn from any liability; one which protected them in their capacity as trustees and as members of the limited partnership, and the other which protected them in the only real and substantial capacity which they occupied, as certificate holders, equally with their associates.

For this mutual agreement the reciprocal exemption was a consideration. None of these parties contemplated that Hecht and Finn were to be under any greater liability than any of their associates. And we submit it would not be consistent with an honorable intention on the part of all the gentlemen responsible for this organization to construe their plan as contemplating a liability by Hecht and Finn and no responsibility by their associates. Mr. Hoffman clearly repudiates any such understanding on his part. (Pr. Rec., p. 687.) But Hecht and Finn assumed this position as formal special partners, and agreed to this exemption of their associates from liability, only in consideration of the mutual agreement that they, as trustees, should be under no liability, because of the position which they thus assumed. If the protection which the latter agreement was designed to give fails, the consideration for the agreement that their associates should be exempt certainly fails *in toto*.

We are dealing now with the result if liabilities are imposed upon one of these associates in favor of third persons and contrary to the intention and ex-

pectation of all the associates. If such liability is imposed by law upon Hecht and Finn, then to impose that liability upon them alone, because the mutual agreement contemplated that certificate holders (in which class they belong) should not be liable, and to disregard the exemption of their liability as trustees, would be to disregard the basic understanding between the parties. The result would be plainly unjust and contrary to the intention of all parties.

If the provisions exempting the trustees are ineffective to protect Hecht and Finn, we submit that provisions exempting certificate holders cannot be construed to relieve the other respondents from liability, and yet have no such effect upon Hecht and Finn who were associated with them as certificate holders.

The decision of a case almost always requires the court to compare the equities of the respective parties, and especially to consider whether one has done or omitted anything to the detriment of the other and in violation of some obligation toward him. To anyone who studies the record of this case with that thought in mind, the following stubborn facts will present themselves with the force of a reiterated contrast between the equities of the contending parties.

No creditor has even been misled or in any way prejudiced by anything relating to the method adopted for the formation of this partnership.

No one ever gave credit to Marcuse & Company because of the relation which these parties held towards the firm, either arising from the partnership articles as filed and published, or from the arrangement evidenced by the Hecht-Finn trust.

No one gave credit to the firm, or in any way changed his conduct because of his ignorance of the Hecht-Finn trust and of the fact that a part of the money was contributed by others than Hecht and Finn.

No creditor ever assumed that Hecht and Finn were liable for his debt, or that they had towards those who dealt with Marcuse & Company any other relation than that of limited partners who could not be held to a personal liability.

If, therefore, any of these parties are to be held liable, it must be by reason of mere accidental circumstances which had no effect in inducing creditors to deal with Marcuse & Company. None of these circumstances, therefore, created in favor of creditors that element which courts call an equity. To impose this liability upon Hecht, Finn or any of the other parties against whom an adjudication is sought, will be to impose upon them what has been aptly called a "penal liability," and give to creditors an unexpected and undeserved security.

We respectfully submit that it is the duty of this court to give effect to the policy adopted by the State of Illinois and by the numerous other states which have adopted the Uniform Partnership Act and the Uniform Limited Partnership Act by which investment in a limited partnership is intended to be made as safe and prudent a method of investment as the purchase of stock in a corporation. It would be the duty of the court to give effect to this new policy even if the court could not agree with the expediency of the policy so adopted, but we respectfully submit that there should be no conflict in this regard between the duty and the inclination of the court.

Under the old law, a limited partnership was almost universally recognized as a "trap" and legal "traps" are not a proper element of intelligent legislation or enlightened jurisprudence.

We respectfully submit that this court should affirm the decision of the Circuit Court of Appeals and that, in so doing, no equity will be disregarded. The persons who, acting upon the advice of experienced counsel, in-

vested moderate sums of money in the business of Marcuse & Company upon the express assurance that they incurred no liability beyond the possible loss of the individual investment, should not see themselves swept into hopeless bankruptcy because the enactment on June 28th of a statute which became effective July 1st had not come to the attention of their counsel on June 30th.

The customers of Marcuse dealt with that firm in reliance upon the unlimited liability of Marcuse and Morris, reinforced by the contribution of \$190,000 of additional capital by the special partners. The customers did not claim that they ever supposed prior to the failure that there was any further financial responsibility on the part of the special partners. The individual contributors to the \$190,000 of special capital were to secure a reward proportionate only to their investment. The payment of \$46,000 by Hecht and Finn to the receiver has already added an element of capital beyond the legitimate expectations of the creditors.

It is equity, it is justice, it is the enlightened public policy adopted by the State of Illinois to give to the creditors all that upon which they had a right to rely and to give to the respondents the full protection of Section 11 of the law which, except for that provision, might have become the means of inflicting grievous and undeserved hardship upon the respondents.

Respectfully submitted,

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

No. 59

IN THE MATTER OF MARCUSE & COMPANY,
ALLEGED BANKRUPTS.

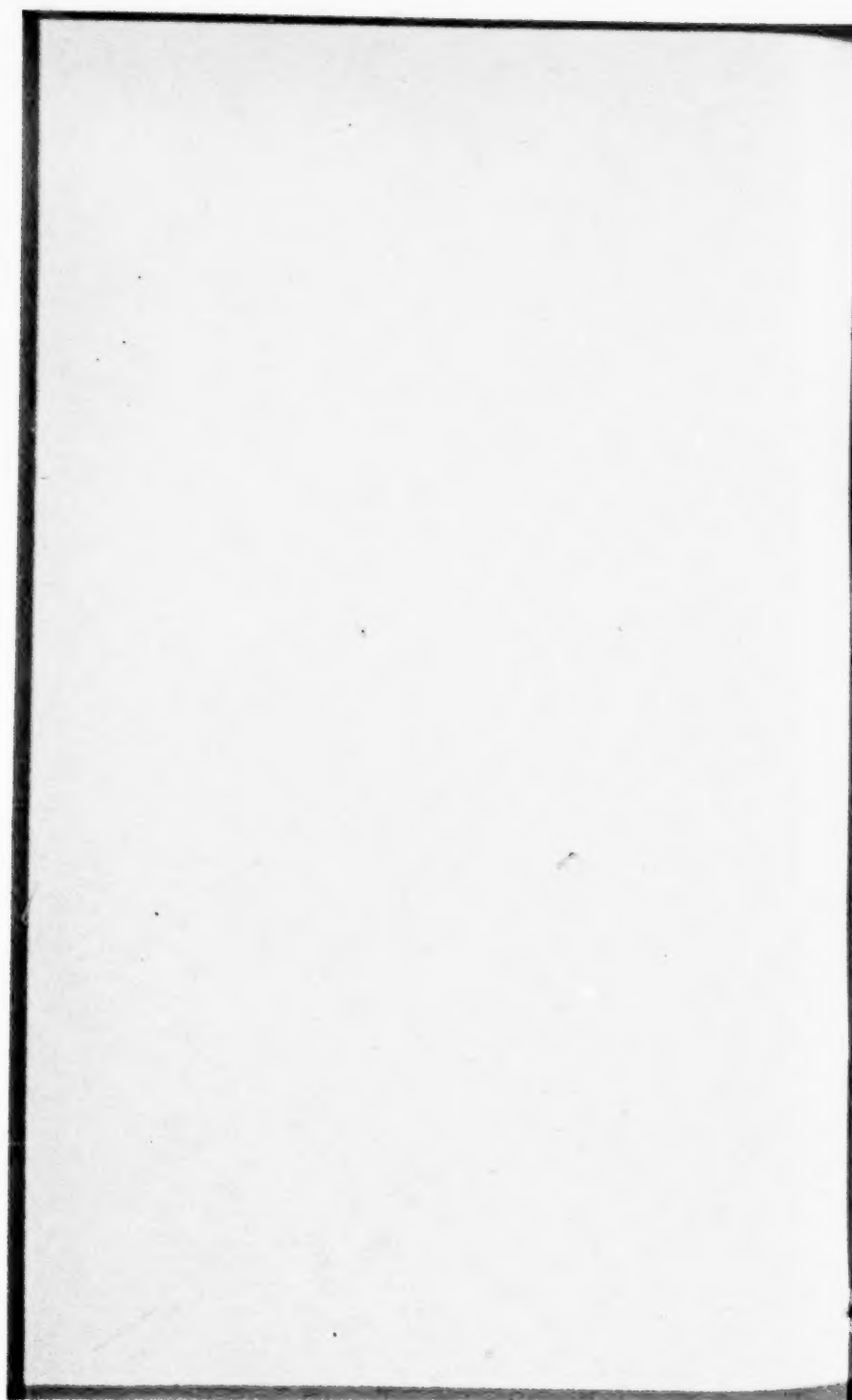
C. B. GILES, ET AL.,
Petitioners,

vs.

HENRY VETTE, ET AL.,
Respondents.

REPLY BRIEF FOR PETITIONERS.

WILLIAM BURRY,
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INDEX.

	PAGE
Agency	37
Amount of tender	15
Claim no customer dealt with firm relying on respondent's financial credit	6
Equal liability of all respondents	21
Intent	35
Intentional false certificate cannot be made basis of an erroneous belief	11
Massachusetts Trust doctrine	30
New York Stock Exchange did not approve partnership	46
No change of plan for forming partnership	23
No renunciation by Vette and associates	18
Pleadings	44
Recording certificate on July 2nd not compliance with act of 1874	40
Rights of limited partners given all respondents	26
Right to contribution	38
Sec. 6, Par. 2 of Uniform Partnership Act	39
Sec. 11, no application	2
Sec. 28, Par. 3 of Limited Partnership Act	42
Subpartnership	32
Summary	46

TABLE OF CASES.

Beecher v. Busch, 45 Mich. 188.....	35
Buckley v. Lord, 24 How. Prac. 455.....	28
Carter Dunbar & Company v. McClure Lucas & Co. 98 Tenn. 109.....	36
Crehan v. Negargel, 234 N. Y. 67.....	27
<i>In re</i> Hoyne, 277 Fed. 668.....	36
Louisville & Nashville R. R. Co. v. Mottley, 219 U. S. 467.....	43
Meehan v. Valentine, 145 U. S. 611.....	37
Pooley v. Driver, 5 Ch. Div. 458.....	29, 36
Thornton v. Duffy, 254 U. S. 361.....	43
Williams v. Milton, 215 Mass. 1.....	32

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REPLY BRIEF FOR PETITIONERS.

Throughout the briefs of respondents runs a confession that no limited partnership was formed under the earlier limited partnership act. It is equally clear and conceded that no limited partnership for a brokerage business could be formed under the new limited partnership act. Respondents therefore practically concede that they were in the wrong and that no limited partnership was ever formed.

Counsel for Vette and others state in their brief (p. 28):

“It was claimed by petitioning creditors, and conceded by all, that the limited partnership contract never became effective as such within the terms or within the life of the 1874 act.”

On page 43 they say:

“In fact the Act of 1874 may be and properly should be put out of consideration in this case. * * * therefore, the legality of the limited partnership known as Marcuse & Co. must be tested by the provisions of the Act of 1917.”

Counsel for Hecht and Finn do not agree with the position so taken but seek to extend the act of 1874 indefinitely beyond its repeal for the purpose of allowing the limited partnership to be completely formed under that act.

The attempt was to form a limited partnership under the 1874 act. The certificate so recited and gave only the information required by that act. It was filed in the office of the county clerk as required by that act, not recorded in the office of the county recorder as required by the act of 1917.

Counsel for all the respondents, however, ultimately fall back, as their main defense, upon Section 11 of the limited partnership act of 1917.

SECTION 11.

The position of counsel is that Section 11 of the limited partnership act, although expressly excluding brokerage firms from its terms, can be made to apply to an incomplete attempt to form a limited partnership under the repealed act of 1874. Section 11 of the act of 1917 is not applicable to a partnership formed under the act of 1874 unless the act of 1917 can be considered as an amendment of the prior act and interwoven with it. The Court of Appeals held that it was such an amendment, and that is the basis on which the opinion of that court rests. In its opinion it is stated:

“In this respect we do not conceive Section 11 to be different in its effect as part of the new law than if it had been adopted as an amendment to the old.”

It was to this position requiring the interweaving of the statutes and the construction of the Uniform Limited Act as but an amendment to the prior acts, that we directed our attention in our main brief. Counsel for Hecht and Finn still cling, in part, to this position. Prof. Lewis insists that the two acts must not be combined or construed together and that the new act inaugurates a new doctrine of partnership.

Counsel for Vette and others have abandoned the Circuit Court of Appeals' position that the new act must be construed as an amendment to the old, and counsel for Hecht and Finn do not press it. Their position now is that the legislature intended, by Section 11, to relieve from liability even parties who, subsequent to July 1, 1917, attempted to form a limited partnership for purposes not then permitted in Illinois and that therefore Section 11 can be applied to the present case. It is to this attempted application of Section 11 we will direct our attention in reply.

The creditors in this case do not base their claim wholly upon the partnership agreement of June 30th or upon the Hecht-Finn agreement or upon the partnership agreement of April 2nd. None of these agreements were carried to completion. The certificate executed in connection with the partnership agreement of June 30th recites that the agreement is entered into under the law of 1874 and that the parties intend to be partners under that act. They, however, did not file the certificate until after the 1874 act was repealed. The filing of it was, therefore, of no effect, in fact, a nullity. The 1917 act required the certificate to be recorded in the office of the county recorder of deeds and it was never recorded in that office. There was never any lawful recording of that certificate. Therefore, there was never any limited partnership established. Everything effectively done

for the launching of this partnership was done on June 30th. The partnership was therefore fully launched as a general partnership on June 30th before the uniform acts took effect. A partnership was therefore formed under the common law. Its creation was fully completed on June 30th. Nothing was effectively done thereafter. Nothing thereafter changed its *status*. It constituted a fully organized partnership, before the uniform acts took effect. The act of 1917 has nothing whatever to do with it. If the Limited Partnership Act of 1917 has any application it only confirms our position that this organization was a general partnership.

It Was the Intention of the Legislature That After July 1, 1917, a Brokerage Partnership Could Be Carried On Only As a General Partnership.

The Illinois statute provides that a *corporation* may be formed for any purposes except banking, insurance, brokerage and one or two other exceptions.*

The new Illinois Uniform Limited Partnership Act provides that a limited partnership may conduct any business except banking, insurance, *brokerage* and one other exception.

It was, therefore, the intention of the Illinois legislature that after July 1, 1917, when two or more parties joined to carry on a banking, insurance or brokerage business they could do so only as general partners and with unlimited personal liability to their customers for the debts of the business.

When the legislature provided that a brokerage business could not be incorporated or carried on by a limited partnership, it was conferring *rights* as well as imposing *liabilities*. It gave the right to the customer of a

*Cabill's Ill. Rev. Stat. 1921, Chap. 32, Sec. 2.

brokerage house to resort to all the property of any member of the firm to recover moneys or property due him. In fact, in framing laws for banks and brokerage houses the legislature probably thought much more of protecting the depositors or customers of such houses than imposing liabilities on the members of the firm. Protection is the principal thing. When the legislature thus gave this protection to customers of a brokerage house by providing for unlimited liability of the members thereof, it could not have intended to provide, at the same time, that ignorance of the owners of their liabilities should deprive the customers of this protection.

As a court should give full weight to the intention of the legislature to give certain rights of exemption to limited partners in a business other than banking or brokerage, so it should also give full weight to the declared intention of Illinois, that those engaged in banking or brokerage should only do so by incurring unlimited personal liability.

It is this legislative intention to exact unlimited liability from those engaged in the banking or brokerage business that is entirely overlooked by counsel for respondents. There is nothing in the views of Prof. Lewis, in the articles set forth in the appendix to the brief filed for Vette and others at variance from the principle we are advancing, that where a state, by legislative action, has declared positively that no banking or brokerage business shall be carried on without unlimited personal liability, the uniform acts must not be construed in opposition to that declared public policy. And when we remember that Illinois does not permit a brokerage business to be carried on by a *corporation*, there is further confirmation that the public policy of that state is as we have indicated.

When the legislature provided: "A limited partnership may carry on any business except banking, insurance and brokerage," it was saying in other words: "This act shall not apply to a partnership carrying on the business of banking, insurance or brokerage."

If Section 11 can be applied as contended for by respondents' counsel, then those states such as Illinois, which have a consistent policy of requiring unlimited personal liability in brokerage and banking houses, will, of course, find it necessary to amend the Uniform Limited Partnership Act to prevent that act being used to defeat their public policy.

We submit that no such changes should be necessary, as neither Section 11 nor any provision in the Uniform Limited Act was intended to upset a declared public policy or to have any application to a business expressly excluded from the scope of that act.

Respondents Claim That No Customer Dealt With the Firm Relying on Respondents' Financial Credit.

Much stress is laid by respondents on the idea, many times reiterated, that no creditor dealt with the firm of Marcuse & Company believing that the respondents, or any of them, were liable for the debts of the firm.

This answer is not good in law. Probably not one person in a hundred who makes a deposit in a national bank knows that in addition to the resources of the bank he is entitled to the protection of a double liability of the stockholders. Yet the court would pay little attention to a defense made by such stockholders of a failing bank that the liability so placed on them by law should not be enforced because the depositors did not know about it when making their deposits, or should only be enforced in favor of such parties as did know. There

are many cases in the books where a person dealt with one whom he considered a principal and to whose liability only he looked when making the contract. Yet if it afterwards appeared that that person, whom he imagined to be a principal, was only an agent and that there was an undisclosed principal (on whose financial responsibility no reliance had been placed) he has a right to hold the undisclosed principal as a responsible party in the transaction. In the City of Chicago, one of the largest merchandising firms was Marshall Field & Company. There were seven or eight other partners. Few of that firm's many thousand customers knew who the partners were. Probably not one of its customers or of the persons who sold goods to it knew or could have named all the partners. Yet while that concern continued a partnership, every one of those partners was liable to the smallest customer upon any sale or purchase made by that firm.

When the legislature withheld the benefits of the Corporation Act and the Limited Partnership Act from members of a brokerage or banking firm, it intended to give this very protection to their customers. It was intended that every customer should be protected by the responsibility of the unknown and undisclosed partners. It was not intended to limit his resort to those whose connection was known and disclosed, who were held out as partners and on whose known connection he extended credit. Such are liable both at common law and under the General Partnership Act on the basis of holding out. But the legislature intended, by removing all statutory limitation on liability, to enable the creditor to resort to any of the owners of a brokerage concern, *known or unknown*. The law on partnership and the law on undisclosed principal gives the creditor that right.

When the statutory limitation of liability was withheld from brokerage business the legislature intended to preserve that right.

Moreover there is not the slightest justification in the record for this reiterated statement. There are many hundred creditors of Marcuse & Co. Who can say on what they relied in doing business with that concern? We known in picking a bank or a broker the prospective customer is influenced largely, if not principally, by the responsibility of the men associated therewith. Marcuse had been a member of a brokerage house which had become bankrupt. Morris had been an employee of that firm and was apparently a man of small means and probably no financial standing. They would not attract custom. Hecht and Finn, whose names appeared in the business, were retired from business, and from their counsel's statement were apparently men of substantial means and good financial standing in the community. Hecht spent a large part of his time in the place of business of Marcuse & Company. He was in and out of the private office and spent much time talking with customers. (Rec., 352-3.)

If at any time during the three years this business was operating, a careful, painstaking man, seeking a responsible brokerage house with which to do business—possibly having his account solicited by Marcuse & Co.—possibly having Hecht's and Finn's connection urged on him, started before placing his account to investigate the character of this partnership, what would he have done? He would have examined the records in the county clerk's office up to June 30, 1917, and found no certificate of limited partnership of Marcuse & Co. Probably he would have made no further investigation of the records, for he knew that a limited part-

nership could not conduct a brokerage business after that date. Had he, however, been extra cautious and continued his search after July 1, 1917, he would have then gone to the records in the county recorder's office (an entirely separate office), and he would have found there no certificate of limited partnership of Marcuse & Co.

Hecht's and Finn's association with Marcuse was published to the world. Their names appeared on the stationery and cards of the company. Although the word "limited" appeared after their names, a most careful investigation would not have disclosed even an attempt to form a limited partnership. Anyone, therefore, dealing with that firm was entitled to do so relying on the public records and statutes of this state, and to deal with Marcuse & Co. on the faith of the unlimited liability of Hecht and Finn; and there is no warrant for saying customers did not do so.

Counsel for respondents speak of the hardship, and, as they call it, the "inequity of holding the respondents liable for the debts of Marcuse & Company." The hardship, if any, is having sustained losses in business—not in being required to pay their debts. The losses have been sustained. They must be borne, either by those who engaged in the business or their customers. If the losses were greater than they should have been, the responsibility rests on all the respondents, for they all had the right to examine and audit the books and dissolve the business. The losses will not be diminished by throwing them on creditors. The statutes of Illinois in substance provide that such losses, sustained through the operation of a brokerage business, are to be borne by the parties conducting that business and not by the creditors. In this proceeding the creditors are seeking to give effect to that statutory policy.

And so far as the hardship of this case is concerned, it is the creditors who are suffering hardship. Money was lost and dissipated by the firm, probably to the amount of \$2,500,000. The creditors paid their money to the firm. They received nothing for it. The firm declared dividends out of the money so paid in. And they are here contending that not even those dividends need be returned. Is there any equity in favor of the limited partners as against the creditors? It is stated in respondents' brief that without the contributions of the special partners, if they had not gone into the enterprise, the firm could not have engaged in business. Marcuse states in his testimony that it was necessary to the enterprise that about \$200,000 should be obtained from the special partners. (Rec., 444.)

If respondents had not come to his aid, Marcuse could not have organized the firm, or made a financial showing that would have entitled it to trade upon the New York Stock Exchange, or have published that fact for the purpose of drawing customers and obtaining their deposits. It was the action of these respondents and their contributions that enabled this ill-advised venture to start, that enabled it to act on the New York Stock Exchange and thereby obtain greater credit, that drew to the firm orders to purchase stocks and bonds and the deposit of the funds with which to make the purchases. Respondents were not novices. They knew what trading on the New York Stock Exchange meant. They knew that they were enabling Marcuse to open such an office and to obtain a standing on the New York Stock Exchange, and they expected to win great gains thereby. By Exhibits A and B they were all given the right to inspect the books, to receive balance sheets, to appoint auditors of the accounts and to close up the firm's business.

Yet, steadily for nearly three years the business was run at a loss. Their capital quickly disappeared and if they had performed the duty reserved to them of examining the books, having balance sheets and appointing auditors, they should have found that before a year was out all the capital had disappeared, the business was being conducted on misappropriated moneys and they were receiving dividends from misappropriated moneys. Respondents are far from blameless in this matter. They are not nearly as innocent as are the trusting customers and depositors who lost so much.

It was then the acts of these respondents that rendered possible the loss of the creditors' moneys, that rendered possible the squandering of the creditors' deposits. As between respondents and the creditors, the creditors have the greater equity. This case is in itself a sufficient reason for the Legislature of Illinois to forbid the formation of a corporation for brokerage purposes and to exclude brokerage firms from the privileges of the Limited Partnership Act.

If the court agrees with us that Section 11 has no application to a business not included within the scope of that act there will be no occasion to consider our further suggestions on that section. In our brief, however, we advanced other reasons why Section 11 was not available to relieve respondents from liability. Respondents have controverted those suggestions and we will now reply to the positions taken thereon by respondents.

An Intentionally False Certificate Cannot Be Made the Basis of an "Erroneous Belief."

Respondents insist that they "erroneously believed" that they were limited partners within the meaning of Section 11.

Let us assume for a moment that Section 11 is applicable to a partnership formed to conduct a brokerage business. Still Section 11 would not relieve the respondents from liability. In our main brief we presented the position of the creditors that Hecht and Finn were not trustees—that they had not a single right or title in the limited partnership that was not common to all respondents. In this position counsel for Hecht and Finn concur. They insist that the various instruments executed by the parties in giving final effect to their agreement must be construed together, and, as so construed, withdrew from Hecht and Finn any control over the trust fund and its income and did not give them any rights or obligations not shared in by the other respondents; in other words, that Hecht and Finn in signing the partnership agreement acted but as the *representatives* of themselves and associates for the purpose of obviating the rule of the New York Stock Exchange.

If counsel for Hecht and Finn are correct in this position that Vette *et al.* bore the same relation to the firm as did Hecht and Finn, then the certificate signed by Hecht and Finn was false, for it did not disclose that Vette *et al.* had contributed to the capital and had an interest in the business. It was knowingly made false and none of the respondents can avail himself of Section 11 to escape liability. For the purpose of this discussion we are assuming the partnership was for a purpose permitted by the Uniform Limited Partnership Act. The construction, therefore, placed by this court on Section 11 is highly important in the development of limited partnerships under the new limited act. That act, by reason of its general adoption, is practically a federal statute. Uniform interpretation is as desirable as uniform text. The high authority of this court will be controlling in all state courts. The important ques-

tion of statutory construction involved is whether or not parties, in order to avail themselves of Section 11, must not in good faith, without fraud, without concealment and without evasion, disclose in the statutory certificate the names of the parties affiliating together to form the limited partnership and the amount of their contributions.

The Uniform Limited Partnership Act, Section 2, provides that the persons desiring to form a limited partnership shall:

"A. Sign and swear to a certificate which shall state:

I. * * *

II. * * *

III. * * *

IV. The name and place of residence of each member.

V. * * *

VI. The amount of cash * * * contributed by each limited partner."

The purpose of the Commissioners of Uniform Law in drafting and submitting the Uniform Limited Partnership Act, was a high and commendable purpose. They sought to give the business world a new vehicle of associating capital in commercial enterprises with limited liability of the associates. With that purpose we heartily sympathize. To make this vehicle more attractive and relieve partners from the penalty of general liability through mistakes in forming the association, Section 11 was inserted. Was Section 11 intended, however, to be a cloak or refuge for members of associations who launch their organization with initial concealment and misrepresentation as to the material statutory requirements. The statute does not require much, but one of these requirements is that they give the *names* and *addresses* of the members of the association and the *amount of capital contributed by each*.

Counsel for Vette and associates meet this point by contending that their clients were not members of the association. They refer to certain provisions of the agreement and cite certain cases in support of their position. In a later part of this reply we will comment on matters brought forth by them to sustain that position.

Counsel for Hecht and Finn assert and, we submit, demonstrate that the other respondents were as much members of the association as were Hecht and Finn. When they do so they admit that the statutory certificate *signed by their clients* was false in not disclosing the names of the other members of the association and false in its statements as to the amounts of the respective contributions.

In our main brief we pointed out reasons why the disclosure of the names of the members of the association was necessary and material. Whether or not the reasons suggested for the requirement are sufficient, *the statute does so require*. And we submit that when the parties have consciously, intentionally and deliberately prepared and filed a misleading statutory certificate, they could not have an "erroneous belief" that they were members of a limited partnership.

Otherwise parties associating themselves together in such an association could consciously ignore all statutory provisions, could intentionally make a false and misleading certificate and then, if the project was not successful, and disaster overtook them, "renounce" their interest in the partnership and claim exemption from liability under Section 11.

If limited partnerships under the new Uniform Limited Act are to serve a useful place in the commercial

world, sanction must not be given to the contention that they may be conceived in fraud and misrepresentation and then obtain immunity under Section 11. Under such a construction, Section 11, instead of being a salutary provision to relieve parties from the effect of inadvertent or unintentional omissions, would be perverted into a provision for relieving parties from their own wrong.

Amount of Tender.

In our brief we submitted that respondents had not shown a complete renunciation of all profits received by them from Marcuse & Company as all but Vette and Zuncker were creditors of Von Frantzius and entitled to receive their pro rata share of the 25 per cent of the profits which were to be segregated and set aside for the Von Frantzius creditors. In response to that position, counsel for respondents Vette *et al.*, urge that to claim the advantage of Section 11, it was not necessary for the respondents' to return *any* of the profits received by them. Their contention is that it was only necessary to "renounce" *future* profits and not profits previously received. This position is here advanced for the first time. Counsel for all parties previously proceeded on the assumption that under Section 11 it was necessary to return profits received in order to claim the advantage of that section. This unique position was undoubtedly suggested to counsel by the note in 71 Penn. Law Review reprinted in their appendix.

This claim is not in harmony with the act. The party seeking to avoid liability under Section 11 must "promptly renounce his interest in the profits of the business or other compensation by way of income." Renounce in this connection means to return, to redeliver,

to withdraw, and he must renounce or redeliver the profits of the business and also any other compensation that he has received by way of income, such as a salary.

When the statute requires that, in order to claim the benefit of Section 11, they must renounce their interests in the profits of the business, it must mean that they give up and return, for the benefit of creditors, profits received by them as well as their interest in future profits. If confined to the latter, it would be meaningless. The question would ordinarily only arise, as in this case, after insolvency, and to renounce interest in future profits of an insolvent concern already in bankruptcy, would be meaningless. The injustice of such a position, in fact the moral obliquity of it, is in keeping with this effort of respondents to keep everything they can, to hold on to profits acquired in violation of law, to hold on to dividends declared not from profits but from money deposited by the creditors, misappropriated moneys, and to leave the creditors in the lurch.

Counsel for Hecht and Finn meet the point by asserting there had been no distribution to the respondents of the 25 per cent of the profits allocated to Marcuse for the payment of the Von Frantzius creditors; they assert further that the Von Frantzius assets had not been liquidated at the time of the bankruptcy, and the amount of the deficit, if any, in that estate not ascertained. For this assertion they go outside the record. There is not a word in the record as to the liquidation of the Von Frantzius assets or what that estate paid or of the disposition made by Marcuse of the 25 per cent of the profits which were to go to him to apply on Von Frantzius certificates, before any dividend could be paid by the new firm.

In our brief we did not claim that the evidence showed

actual distribution by Marcuse of this 25 per cent of the profits. We did contend and again insist that respondents, in claiming exemption under Section 11, brought forward an affirmative defense and that the burden was upon them to prove they had renounced all interest in the profits before they could claim the advantage of that section. The evidence did show that all the respondents except Vette and Zuncker were substantial creditors of Von Frantzius, and that one of the cogent reasons for their embarking in the new enterprise was to secure payment of their debts from the Von Frantzius estate; that under the partnership agreement 25 per cent of the profits of Marcuse & Co. was to be paid over to Marcuse to be distributed among the Von Frantzius creditors; that, according to the books of Marcuse & Co., profits had accrued to that concern which had been distributed amongst the special partners and that therefore Marcuse must have received that 25 per cent of the profits for the Von Frantzius creditors and distributed that amount among the certificate holders. At any rate when it appeared from the documents that the respondents were entitled to their *pro rata* share of the 25 per cent of the profits so to be paid over to Marcuse, *the burden was upon them to prove* they had received no part of these profits or if received, to refund them. If they had received no part of the 25 per cent of profits, proof thereof would have been a simple matter. They presented an affirmative defense and failed to prove an essential fact necessary to establish that defense.

The further labored argument in the same brief that there is a distinction between the position of Hecht and others as creditors of Von Frantzius, and their position as limited partners, will not avail. One of the negotiations leading up to the partnership agreement, one of the principal agreements made in connection therewith,

was that respondents holding indebtedness certificates should receive dividends thereon through Marcuse *from the profits of the partnership enterprise*. The two things are so bound together, forming part of the same contract, one being an inducement to the other, that they cannot be separated. One of the profits of the business was the amount that each respondent received on account of what Von Frantzius owed him.

**Position of Vette and Associates as to the Tender
and Renunciation.**

Counsel for Vette and others similarly situated, state that no one can seriously contend that Vette and the other respondents in his group are liable for the debts of Marcuse & Company if Hecht & Finn are not liable. This does not follow. If all the respondents became liable in the first instance for the debts of the partnership, and admitting (which we do not) that Section 11 was applicable to a brokerage partnership and that Hecht and Finn absolved themselves from liability by their renunciation, it seems clear that the other respondents who took no part in the renunciation and made no contribution to the tender did not absolve themselves from liability.

If necessary to return profits received in order to avail themselves of Section 11, the respondents other than Hecht and Finn certainly did not meet the requirement, for they retained and have to-day in their possession every cent of profits drawn by them from Marcuse & Company. There is no dispute as to this.

Even if a mere renunciation of future interests is adequate, they did not bring themselves under Section 11. Let us test this a moment. Assume that after the renunciation by Hecht and Finn there had been a sud-

den change in the market, and the securities in the possession of the receiver for Marcuse & Company had greatly appreciated and the partnership had become solvent and rich, Hecht and Finn by reason of their renunciation could not claim an interest in these profits. But what would bar the other respondents from claiming their interests. Not the renunciation of Hecht and Finn for we can search the Hecht-Finn agreement in vain for any authority of Hecht and Finn to renounce the interests of the other certificate holders in Marcuse & Co. If prior to the receivership and while Marcuse was still a going concern Hecht and Finn had attempted to make such a renunciation, the other respondents would have been quick to successfully disclaim the right of Hecht and Finn to make such renunciation. Not having authority in the Hecht-Finn agreement to make renunciation on behalf of the other respondents, Hecht and Finn before making the renunciation sought such authority from the other respondents. They declined to give it. (Rec., 658-9.)

When the bankruptcy petition was filed against Marcuse & Company, the respondents Vette and associates were forced to take their position. They either had to assert, as they did and have since done, that they were not partners with Hecht and Finn in Marcuse & Company, or claim that they "erroneously believed" they had become limited partners, renounce their interest and tender back the profits received. They elected to take the former position. They cannot now claim the advantage of the action of Hecht and Finn who elected to take the latter position.

Vette and associates and their counsel have persistently contended that they did not become and never thought they became limited partners.

Mr. Platt testified that before making the tender and renunciation on behalf of Hecht and Finn, he conferred with Mr. Miller and Mr. Defrees representing the other respondents, seeking authority to make the tender and renunciation on behalf of the other respondents, and that they declined to give this authority. On cross-examination Mr. Miller asked Mr. Platt (Rec., 660):

“Q. Do you remember my saying to you that from my viewpoint the men I represented were not limited or special partners of the firm?

A. I remember your saying that.”

Mr. Miller later asked Mr. Platt if he did not recall Mr. Defrees saying that his position was substantially the same as Mr. Miller's, and Mr. Platt testified that he did so recall. (Rec., 661.) Counsel for Vette *et al.*, from the very first, therefore, took the position that their clients were not limited partners and refused to return the profits received or permit renunciation to be made in their name. They took the same position in the Circuit Court of Appeals and have taken the same position in this court. How then can they claim the advantage of the statute relating to those who erroneously believe they *had become* limited partners in a limited partnership?

It is not unusual that one must elect as to which of two inconsistent positions he will take. Having so elected he must stand by that position.

Section 11 has no place in this case. It was intended to apply only to partnerships within the scope of that act and even if otherwise applicable respondents have not availed themselves of that section.

ALL RESPONDENTS ARE EQUALLY LIABLE.

In our main brief we pointed out the essential identity of the relations of Hecht and Finn and the other respondents to the partnership. Counsel for Hecht and Finn concur in this position and have demonstrated the entire lack of any trust relation between Hecht and Finn and the other respondents. They particularly call attention to the provision in the Hecht-Finn agreement by which the partnership articles are incorporated therein as if set out *hæc verba*, and the provision in the Hecht-Finn agreement that the holders of the certificates provided for by that agreement should become parties thereto as if they had individually signed the agreement. We submit for the reasons given in our main brief and elaborated in the argument for Hecht and Finn, that there was an identity of rights and obligations among Hecht, Finn and the other respondents.

Counsel for Vette and associates take the position that, although Hecht and Finn may be liable as special partners, the other respondents, not being specifically named in or having specifically executed the partnership articles (although by the provisions just referred to their rights are fixed as if they had in fact done so) occupy a different relation to the partnership and are not liable as general partners. We will not repeat our former arguments showing the identity of the relation, but wish to comment on one or two matters brought forward by counsel for the respondents, Vette and associates, in support of their position.

Paragraph 6 of the Hecht-Finn Agreement.

Counsel for Vette and associates, set forth at length and place great reliance on Section 6 of the Hecht-Finn agreement. (Brief, pp. 7, 78 *et seq.*) Section 6 contains a *recital* that the holders of the trust certificates shall have no right, title or interest in the copartnership, its property or assets and shall not be construed to have assumed any liability in respect to the copartnership.

This section does not purport to take from the certificate holders a single right given them under other provisions of the contract. It is squarely inconsistent with the other provisions of that agreement. That agreement gives Vette *et al.* the right without "interference, interruption or hindrance" by Hecht and Finn, or the general partners, to have access to the books of account of the copartnership; they are to be furnished yearly inventories and accounts; they are to be furnished monthly trial balances of the partnership; they may take part in appointing auditors to audit the business; they may dissolve the copartnership, and they may, if Hecht and Finn refuse to do so on request, bring suit in their own name or otherwise to dissolve the partnership. Not one of these rights is taken away by Section 6. The declaration in the latter part of Section 6 that the interest of these respondents shall be considered personal property and assignable, is again but conferring on these respondents, specifically, another of the rights of a special partner (and a right overlooked by us in our main brief in calling attention to the identity of the rights of these respondents and special partners). The Uniform Limited Act (Sections 18 and 19) expressly provides that a limited partner's interest in the partnership is personal prop-

erty and assignable. (Cahill's Illinois Revised Statute, Chap. 106a, pars. 62 and 63.)

With admirable fairness the Hecht-Finn agreement (Section 8) provides that Hecht and Finn shall not by virtue of being parties to the Hecht-Finn agreement *or the partnership agreement* be liable for anything. If Hecht and Finn by executing the partnership agreement, entered into such a relation with Marcuse and Morris that they became general partners in the partnership enterprise and liable to creditors for the debts thereof, no recital in another agreement between Hecht and Finn and Vette and associates can relieve them of this liability. If the relationship assumed by the certificate holders under the Hecht-Finn agreement is such as to impose partnership liability on them, recitals of no liability are as futile to relieve these respondents from liability to the creditors as are the recitals in Section 8 to relieve Hecht and Finn.

There Was No Change of Plan for Forming the Partnership Between April 2 and June 30, 1917.

In our brief (pp. 31-38) we gathered and presented extracts from the record showing that the purpose of all the respondents to join a partnership to take up and carry on the brokerage business theretofore conducted by Von Frantzius, never changed and that only the form of it was varied. We believe that testimony established our position beyond a doubt. We stated, however, that there was a little testimony to the contrary and on page 38 mentioned the testimony of Buckingham, Hoffman and Robertson, and thus stated plainly that there was a conflict in the testimony on this point.

The extracts from the testimony used by us were most fairly presented and were in large part the testimony

of respondents and their partner Marcuse, with some extracts from the testimony of their lawyer, Hoffman.

Counsel for Vette and others in their brief cast aside entirely the evidence so quoted by us, and insist that the evidence of Buckingham, Hoffman and Robertson shows that the plan of the articles of April 2nd was entirely abandoned and an entirely new plan was devised and embodied in the partnership articles and Hecht-Finn agreement signed June 30th.

On page 13 of the brief filed by Messrs. Miller and Buckingham it is stated that "there is no conflict of evidence as to any material fact." This sentence follows a statement on pages 5, 6 and 7 of the same brief regarding what is called "A change of attitude," and plainly refers to the point now under discussion. The change of attitude is evidently considered by counsel for respondents as a most material fact. Again and again they say that the arrangement of April 2nd was abandoned and the alleged entirely new and different arrangement of June 30th taken up. The overwhelming evidence is that there was no change of attitude and that the same scheme or arrangement persisted throughout the time referred to, and practically the same articles with necessary changes and with the *unchanged* date.

But all the testimony we pointed out in our brief is disregarded and on pages 5 and 6 of their argument relating to this so-called "change of attitude" there are many references to the record purporting to support the point that there was a change of attitude. Almost all those references, however, are to the testimony of Buckingham, Hoffman and Robertson. Buckingham is counsel in this case for the Studebakers. Hoffman was a lawyer in the office of Buckingham. Robertson was an attorney for Vette and Zunker. We insist

that the testimony of these three individuals was directly contradicted by the testimony referred to in our main brief on this point.

In their so-called "more comprehensive statement of facts" counsel for Vette *et al.*, under the subheading "Change of Attitude" (Brief, p. 5), assume that there is no testimony in the case as to reasons for changing the form of the agreement other than that of Buckingham and his associate lawyers. But Marcuse, Finn, Regensteiner and Zuncker all testified at length as to the reasons for changing the original partnership articles into the form finally adopted. Their testimony contradicts Buckingham's testimony. Marcuse testified that none of the respondents or their counsel at any time gave any reason for the change in the form of the partnership articles other than the rule of the New York Stock Exchange. Hoffman specifically testified that in the revision of the papers he did not understand that Hecht and Finn's liability would be any different from that of the other respondents. (Rec., 687.)

In an attempt to break the weight of petitioners' evidence on this point, counsel, on pages 122 to 124 of their brief, charge that we have on pp. 31-38 of our brief, unfairly grouped our excerpts from the testimony. They also charge that we have not fully stated the context from which the quotations came. And on pages 58 to 95 of the second volume of their brief (called an appendix) they try to point out something to sustain their charge and to find place for further argument. In trying to so point out something, they miserably fail, they cavil on irrelevant points and show that our excerpts were properly made. There is absolutely no ground whatsoever for their criticism. No excerpts were ever more fairly made.

On the other hand, however, counsel were not justified in saying "There is no conflict of evidence as to any material fact." This is especially true when *their* clients testified to a different state of facts and said the only reason they remembered for the difference between the agreements of April 2nd and June 30th was the rule of the New York Stock Exchange. Indeed, in writing their brief Mr. Miller and Mr. Buckingham gave entirely too much prominence and weight to Buckingham's testimony. The testimony quoted by us was entitled to great weight as much of it was given against interest. The testimony of Buckingham, Hoffman and Robertson was that of interested parties. They were the three lawyers who represented most of the respondents in the making of the partnership articles. They were, therefore, largely interested in the case. We cannot imagine a greater interest a witness could have than that of a lawyer trying to extricate his client from a difficult position into which he had entered under his advice.

Certainly the District Court had a right under such circumstances to find that there had been no change of attitude and that finding was involved in holding all the respondents to be general partners of Marcuse.

All Respondents Had All Rights of Limited Partners.

In our original brief we pointed out that every right of a limited partner was, by the various documents, conferred upon all respondents. In that discussion we referred to the act of 1874 in defining the rights of a limited partner. If as urged by counsel for respondents, Vette and associates, the act of 1874 must be disregarded in determining the rights of the parties and only the act of 1917 considered, the result is exactly the same.

In Section 10 of the act of 1917, the rights of a limited partner are defined. Those rights are: to inspect the partnership books; receive formal accounts of the partnership affairs; secure dissolution by decree of court; and to share in the profits (Cahill's Ill. Statutes, Chap. 106-a, par. 54). All these rights respondents had. In our main brief we challenged counsel for respondents to point out a single substantial right of a limited partnership, that was not given *all respondents* by the limited partnership agreement, the Hecht-Finn agreement and the consent of the general partners to the Hecht-Finn agreement. They did not indicate a single right of a limited partner under either the act of 1874 or 1917 which were not conferred upon *all* the respondents in this case.

In this connection we wish to comment on the case of *Crehan v. Megargel*, 234 N. Y. 67, cited and relied on in both briefs filed for respondents.

In the *Crehan* case the agreement under which the subscribers contributed part of the funds which went into the partnership expressly provided that the subscribers were "to have no right of accounting or other rights whatsoever against the said partnership, * * *" but were "in all respects to be strangers thereto." This clause is substantially the only provision from the agreement quoted by the New York court, which held that, under that agreement, no rights of special partners were reserved or attempted to be reserved to the subscribers to the funds and that, therefore, they acquired no rights in or to the special partnership and were not persons "interested therein." In its opinion the court says further:

"Of course we do not intend to negative the proposition made by the plaintiff that an arrangement might be made by one who was not named as spe-

cial partner which would be so designated to evade the statute *and give him the rights of that status*, that he would be held liable under the penalties of the law."

The court added that such was the basis of the decision in *Buckley v. Lord*, 24 How. Prac. 455.

Turning to the *Buckley* case, we find that in that case the special partnership agreement was signed by Marks and part of the capital contributed by Bramhall. The special partnership agreement contained the following provision:

"As a matter of courtesy to Mr. E. C. Bramhall of Jersey City, for the interest he has manifested in the welfare of this copartnership, and his assistance in the advancement of its interests, we invite him, at all times, or at such times as may suit his convenience, to examine into our business affairs."

The court held that this apparently innocent language was merely an attempt to evade the statute and give Bramhall the rights of a special partner without disclosing in the recorded papers his connection with the partnership.

As we have heretofore shown the right to inquire into the partnership affairs, examine the corporate books, secure monthly and annual reports and audits, to appoint auditors and to dissolve the business, were all reserved to the contributors to the fund. The rights which were expressly denied the contributors in the *Crehan* case were given them in the case at bar. The rights which, in the *Buckley* case the New York court held gave them the *status* of special partners, in evasion of the statute, were conferred upon them in this case.

The case at bar is further distinguishable from the *Megargel* case in this: In the present case there was a valid executed agreement of partnership between all the respondents placed in escrow to wait the acquisition of

the assets of the Von Frantzius estate. That document evidenced exactly the intentions of the parties. Had it been delivered and acted upon, it would have created a partnership. The intention to form a partnership was therefore fixed and conceded and continued from that time down to the time of bankruptcy, unchanged in attitude or condition. Nearly all the witnesses specifically stated that the scheme was altered only by the New York Exchange rule concerning limited partnerships. The intention of the partners did not change and never changed until bankruptcy, as is particularly shown by the acceptance of the 4 per cent dividend direct from Marcuse instead of through the Chicago Title & Trust Company, which was the only trustee under that trust agreement. Taking the scheme as a whole, including the three principal documents (2 partnership agreements and the Hecht-Finn agreement) we have a state of facts entirely different from those in the *Megargel* case, a state of affairs from which the District Court was justified in finding that these parties were all partners and in disregarding the so-called "Hecht-Finn Trust."

In *Pooley v. Driver*, 5 Ch. Div. p. 458, Jessel, Master of the Rolls, considered at length, with an extensive review of the authorities both under the common and civil law, the effect of attempting to give one all the rights of a partner without the attending liabilities.

In that case in which the partnership had raised part of its capital by the sale of certificates which entitled the holders to share in the profits of the business but attempted to protect them against the liabilities of the partners, he said, among other things (p. 482):

"I put it to the learned counsel, in the course of the argument, whether they could suggest any right which would be given to an ordinary dormant partner, not possessed by these contributors, and after

consideration and discussion, they were unable to do so. That is the general effect of the deeds."

And then, after pointing out further how the contributors had all the rights of a partner, he continued:

"Well, if that is so, is not that exactly the thing which it was intended should not take place—that a man should not put forward another to carry on the business ostensibly and himself take the profits? It is the very object and meaning of the transaction, as I understand it, to give these contributors that very position which dormant partners usually occupy, with certain collateral advantages—exceptional, perhaps, but not altogether unusual; unusual, no doubt, in the sense that I have seldom seen—I was going to say so barefaced, but, when you come to see the reason of it, I will say so palpable—an intention exhibited on the face of the documents to give the contributors all the benefits of the partnership, and if possible to secure them from suffering from the liabilities."

And in conclusion he stated (p. 493):

"It is an elaborate device, an ingenious contrivance, for giving these contributors the whole of the advantages of the partnership, without subjecting them, as they thought, to any of the liabilities. I think the device fails; and that, looking at the law as it stands, I must hold that they are partners, and liable to the consequences of being partners, and to the whole of the engagements of the partnership, and consequently liable for the whole of its debts."

Massachusetts Trust Doctrine.

Counsel for Vette and others suggest that the relationship between Hecht and Finn and the other respondents under the Hecht-Finn agreement was in the nature of a so-called "Massachusetts Trust." In our brief we did not discuss the Massachusetts Trust doctrine. It was not necessary to do so.

There is no place in this controversy for the doctrine

of the so-called "Massachusetts Trust." Such a trust has nothing peculiar about it and rests upon general trust doctrines. If a fund is given over to one or two trustees who have the complete custody and power of disposition of it, who are to manage it and to disburse the net profits received therefrom, there may be an element of trust, and the managers may be called trustees. But Hecht and Finn had no power over profits, or even over principal on dissolution of the partnership; they were not to receive the principal; they had absolutely no power that the other respondents did not have.

Respondents are mistaken in stating several times in their brief (page 107) that the only interest of the respondents other than Hecht and Finn in the partnership profits and assets was through Hecht and Finn. These latter were not trustees. The only trustee in the trust agreement was the Chicago Title & Trust Company. Its duty was to receive direct from Marcuse & Company all the profits and distribute them ratably among all *seven* of the special partners. It was the same way with the *corpus* of the estate upon dissolution. Hecht and Finn could only receive that which belonged to them. The share of Zuncker and the other respondents never could pass through the hands of Hecht and Finn. The certificate holders had an equitable interest in the assets and profits of Marcuse & Company and could have recovered that interest in a court of equity. Every one of them had a right to an accounting and to a decree for his share of the net profits. Hecht and Finn were not trustees.

It is not necessary to analyze in detail the cases cited by counsel on this point. It is sufficient to call attention to the fact that in each of those cases where it was held there was a true Massachusetts Trust, there was property given the trustees over which they had the sole do-

minion for the purpose of investing or trading. The trustees had broad comprehensive powers and were not subject to the control in any substantial manner of the *cestuis*.

In *Williams v. Milton*, 215 Mass. 1, cited and so strongly relied on by counsel, Justice Loring in distinguishing between the cases which held that the relationship created a partnership, and those cases where the relation created was not a partnership, said that the difference

“lies in the fact that in the former cases the certificate holders are associated together by the terms of the ‘trust’ and are the principals whose instructions are to be obeyed by their agent, who for their convenience holds the legal title to their property. The property is their property; they are the masters; while in *Mayo v. Moritz*, on the other hand, there is no association between the certificate holders. The property is the property of the trustees and the trustees are the masters.”

Applying the distinction laid down in that case, even in Massachusetts there would be no element of the so-called Massachusetts trust in this case. There is no property in the hands of Hecht and Finn of which they are the masters.

As pointed out in our main brief, however, the Massachusetts Trust doctrine is not recognized in Illinois, but in this state joint stock companies are partnerships. (Brief, p. 90.) Counsel for Hecht and Finn cited additional Illinois cases to the same effect. (Their Brief, pp. 45, 46.)

Subpartnership.

As an alternative to the Massachusetts Trust theory, counsel for Hecht and Finn suggest a subpartnership between Hecht and Finn and respondents Vette *et al.*

There was no element of subpartnership in the document. The relation of Hecht and of Vette and Finn and of the Studebakers to the firm was exactly the same.

Again it is not necessary to analyze the cases cited in detail. It is sufficient to point out that in none of the cases cited do the facts bear the slightest relationship to the case at bar, and particularly that in not a single case cited did the so-called subpartner have any rights in the partnership whatsoever, such as the right to examine the books, have an accounting and to dissolve the main partnership. In fact, in the very quotations cited by counsel on page 108 and following of their brief, it appears clearly that such rights in the main partnership are inconsistent with a subpartnership. For instance, in the quotation from Meachem (Brief, p. 108) it is said "And he (the subpartner) has no rights of accounting against the original firm." In the last paragraph in the quotation from Bates (Brief, p. 109) it is stated that the subpartner has no such community of interest in the profits as to compel an accounting from the partnership. In the quotation from Cyc. of Law and Procedure (Brief, p. 109) it is again said, "He (the special partner) has no right to an account as a partner."

Under point A, beginning on page 78 of their brief, counsel for Vette *et al.* argue at length that the Hecht-Finn agreement did not make Vette and others partners with Hecht and Finn. That is not the question. The question is whether the partnership agreement and the Hecht-Finn agreement made Hecht, Finn and the other defendants partners with Marcuse and Morris. It has been the position of the creditors throughout that Hecht and Finn became general partners with Marcuse & Co. and that in the language of the district judge who tried the case, "That Hecht and Finn, in fact, were Hecht

and Finn, Vette, * * * Regensteiner, the Hecht-Finn Trust, the Studebaker Trust as Clement and George Studebaker; * * * They were all of these people." In other words, again in the language of the findings of the District Court "that these so-called 'special partners,' selected,—all of them selected Hecht and Finn as the agents for the operation of the special partnership by and through Hecht and Finn."

The many long and devious courses suggested by respondents' counsel through which money must pass from this partnership to the various respondents, including the Studebakers, are advanced only to mislead. Dividends were declared by Marcuse & Company and distributed by the Chicago Title & Trust Co. as trustee. To say that they were dividends when they came to the hands of the trustee, but trust funds when distributed by it to the various respondents means nothing. The profits of the enterprise were paid directly to the Chicago Title & Trust Co. for distribution as dividends to these respondents. There is no way of quoting the record, no way of calling the funds dividends at one time and trust funds at another, that will cast any cloud upon the plain, evident transaction. Both the Studebakers accepted through the Studebaker Bros. Trust the dividends declared during the three years, and it is too late for either of them to now say that he was not party to the agreement.

THE LIMITED PARTNERSHIP FAILING, IT NECESSARILY FOLLOWS THAT THE RESPONDENTS WERE GENERAL PARTNERS.

Counsel for Vette and associates submit extensive arguments that, even if Section 11 has no application to this brokerage firm, none of the respondents became liable as general partners. This view was expressed

also in the majority opinion in the Circuit Court of Appeals. This contention we discussed in our main brief (page 74), and we do not intend to repeat arguments there presented. We will only answer one or two points urged by counsel in support of their position.

Intent.

They urge that "*intent*" is the determining factor, and if respondents did not intend to become *general partners*, although they entered into an association containing all the elements of a general partnership, they did not become general partners.

It is true that "*intent*" is an element in determining whether or not a partnership exists. In our main brief (p. 79, *et seq.*) we cited cases and text books to the effect that the "*intention*" material in ascertaining whether a partnership exists, is the intention to enter into such a relation that the law attaches to it the obligations of a partnership. In addition to those citations we call attention to the following statements taken, in part, from cases cited by counsel in support of the position, that an "*intent*" to form a partnership is a condition requisite to the formation of a partnership.

In *Beecher v. Bush*, 45 Mich. 188, cited by counsel for Vette and others (Brief, p. 77), Judge Cooley, in discussing the element of intent as a criterion of partnership, said:

"It is possible for parties to intend no partnership and yet form one. If they agree upon an arrangement which is a partnership in fact, it is of no importance that they call it something else, or that they even expressly declare that they are not to be partners. The law must declare what is the legal import of their agreements and names go for nothing when the substance of the agreement shows them to be inapplicable."

In *Carter, Dunbar & Co. v. McClure, Lucas & Co.* 98 Tenn. 109, in holding that the members of a so-called joint stock company were partners, the court said:

“Were these parties engaged in a partnership enterprise? All of the defendants earnestly disclaim any purpose of entering upon such an undertaking. * * * It is no doubt true that the defendants did not contemplate a partnership and each supposed that he was simply taking a share in a joint stock enterprise in which all he risked was the small sum paid for such share; yet it is for the law to determine on the facts already given whether a partnership was created with all its attending liabilities.”

In *Pooley v. Driver*, 5th Ch. Div. 458 at 483, Jessel, master of the rolls, said:

“It was said, and said with considerable force, by Mr. Chitty and Mr. Mathew, that they never intended to be partners. What they did not intend to do, was to incur the liabilities of partners. If intending to be a partner is intending to take the profits, then they did intend to be partners. If intending to take the profits and have the business carried on for their benefit was intending to be partners, they did intend to be partners. If intending to see that the money was applied for that purpose, and for no other, and to exercise an efficient control over it, so that they might have brought an action to restrain it from being otherwise applied, and so forth, was intending to be partners, then they did intend to be partners.”

In *In Re Hoyne*, 277 Fed. 668, in commenting on Sections 6 and 7 of the Uniform Partnership Act, the court said (p. 674):

“Intent is a factor that may be considered in any finding of fact. True, intent must be gathered from the acts of the parties, and not from an unlawful desire to avoid liability; that is to say, the parties may intend to avoid liability, and may fail to do so because their acts and their contract establish a *status* from which liability as a partner follows.”

If the interpretation placed by the Circuit Court of Appeals on the Uniform General Partnership Act, that, under that act, although parties may have intended to enter into a relationship with all the incidents of a partnership, if they did not intend to become partners among themselves, they are not partners as to third persons is to stand, it works such a radical change in the law of partnership that no doubt those states where it has been adopted will wish to amend their act.

Agency.

Counsel suggests another test of partnership is agency (Brief, pp. 67 and 101), and urge that that element was lacking as none of the respondents, including Hecht and Finn, has authority to hire clerks or buy postage stamps for Marcuse & Company.

As pointed out by Mr. Justice GRAY in *Meehan v. Valentine*, 145 U. S. 611, agency is a *result* rather than a *test* of partnership.

It is possible for the partners, in their partnership articles, to contract that the management of the business be vested in one of the partners.

In Lindley on Partnerships, 8th Edition, 362, in commenting on the relationship of agency between the partners, it is said:

"It need, however, hardly be observed that it is perfectly competent for parties to agree that the management of the partnership affairs shall be confided to one or more of their number exclusively of the others."

Beginning on page 88, counsel for Vette and others take up *seriatim* the various rights and obligations which the instruments vested in or imposed on respondents and attempted to demonstrate that no one of these elements is sufficient to create a partnership. This is the old and

often criticised method of breaking the twigs separately. It is immaterial whether *any one* of these rights and obligations separately created a partnership. The question is whether *all of them together* created such a relation between the parties as constituted them partners.

We have an association together, contribution of capital, a business conducted for their joint profit, a sharing of profits, a sharing in losses, access to the books, right to audit the business and, in certain contingencies, to dissolve the business. All these elements together, both at common law and under the statute, create a general partnership.

Right to Contribution Among Partners as a Test of Partnership.

Counsel for Vette propose as another test of partnership the question whether, if Marcuse paid the debts of the firm, he could recover contributions from Hecht, Finn and the others. Right of contribution for losses sustained is, of course, an attribute of partnership. It is competent for the partners, however, by contract, to agree on the proportion in which profits or losses shall be shared. As between themselves such a contract controls. Contracts between partners limiting the liability of any partner to a definite amount does not limit his liability to creditors as a general partner.

A more pertinent question is whether, if creditors, ignorant of the relation of Vette and his associates to the partnership, sued and recovered their claims from Hecht and Finn, the latter could enforce contribution from Vette and associates on equitable principles. We submit that there would be such right of contribution, and, if so, Vette and the other respondents should be held directly liable to creditors in the first instance.

We again submit that both at common law and under the Uniform (General) Partnership Act, the limited partnership failing, respondents became general partners, and that the Uniform (General) Partnership Act meant to work no such drastic change in the law of partnership as is attributed to it by the majority opinion in the Circuit Court of Appeals and contended for by counsel for respondents.

PARAGRAPH 2 OF SECTION 6 OF THE UNIFORM PARTNERSHIP ACT.

Counsel for Hecht and Finn quote and rely on a provision in the Uniform (General) Partnership Act not previously referred to. This provision is paragraph 2 of Section 6 of that act. It is set out on page 31 of their brief. That section has no application to this case. If it did it would but confirm our position.

Part of the explanatory note submitted by the Commissioners on Uniform State Laws on this section is as follows (Vol. 8, Uniform Laws Ann., p. 13):

"The paragraph as drawn makes any association formed under a statute a partnership if it would have been a partnership in the state if the act had not been adopted. If the association would not have been a partnership had the act not been adopted, the adoption of the act does not make it a partnership. In short, the adoption of the act does not change the legal status in the state of any association formed under a statute."

In other words, it was not intended, by legislation, to convert into a partnership associations which had been doing business for many years before the passage of the act and which had not theretofore been legal partnerships; such associations for instance as the American Express Co. or a Massachusetts Trust.

If applicable to the present situation, paragraph 2 of Section 6 supports our position.

The section in question occurs in the Uniform General Partnership Act. The act of 1874 was repealed except as to existing partnerships by the new Limited Partnership Act. The 1874 act having been repealed prior to recording the certificate of limited partnership in this case, and the new limited act expressly prohibiting the formation of limited partnerships for a brokerage business and no effort having been made to comply with the new act, the inchoate limited partnership involved would be a general partnership.

That is to say, if Section 6 is applicable at all, then under its provisions whether this partnership became a limited partnership must be governed solely by the law as it was before our Uniform General Partnership Act took effect and without reference to it. Under the Illinois decisions (our Brief, pp. 81, 83), the attempt to form a limited partnership failing for noncompliance with the statute, the purported limited partners became general partners.

RECORDING THE CERTIFICATE ON JULY 2ND WAS NOT A
COMPLIANCE WITH THE LIMITED ACT OF 1874.

In the brief submitted for Hecht and Finn it is suggested that the act of 1874 should be extended beyond July 1, 1917, for the purpose of permitting the filing of a certificate of limited partnership after that date, in spite of the express repeal provision in the act of 1917. How long beyond July 1st should the time be extended—a day, a week, a month or a year? What authority is there for such an extension? It is asserted that the afternoon of Saturday, June 30th, was a legal holiday in Illinois and the county clerk's office was closed. This

is, of course, entirely outside the record. There is not a word of evidence that the county clerk's office was closed on Saturday afternoon, June 30th. Counsel point to no statutory provision as to Saturday afternoon being a legal holiday in Illinois. The only statutory provision we have found is one in connection with the presentation and protesting of negotiable paper. (Cahill's Ill. St. Ch. 98, Sec. 17.) If it is a matter of such general knowledge that the county clerk's office in Chicago was closed on Saturday afternoon, that this court will take judicial notice thereof, then counsel should have been aware of its closing and completed their work in time to file the certificate before the office closed. So far as the record shows, no effort whatsoever was made to file the certificate before July 2nd.

The parties had been working on the formation of this limited partnership from early in April. At that time the statute gave them the privilege of forming a limited partnership to conduct a brokerage business. If they wished to avail themselves of that privilege, it was for them to do so before the statute was repealed and the privilege withdrawn. Anyone interested in investigating the nature of this association was required to examine the records in the county clerk's office up to and including June 30th only. Finding no certificate on file up to that date, he would act accordingly and was not required to return at some other vague indefinite time to see if a certificate had been filed after the repeal of the act.

There is no merit in the contention that filing the certificate on July 2nd, was a compliance with the 1874 statute.

EFFECT OF PARAGRAPH 3 OF SECTION 28 OF THE NEW LIMITED PARTNERSHIP ACT.

Counsel for Hecht and Finn quote paragraph 3 of Section 28 of the Uniform Limited Act as in some way bearing on the subject. They discuss it but little, and it is not mentioned by counsel for other respondents.

That paragraph is:

“This act shall not be so construed as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.”

The section has no application to this case. It is a stock paragraph inserted in many of the uniform acts and in many codes.

The first clause, that the act shall not be construed as to impair the obligation of any contract, adds nothing to the act. It saves to respondents no rights which would not be saved were it not in the statute. No state legislation can impair the obligation of a contract.

The question can, therefore, be restated as follows: If this clause were not in the new act and on July 1st there had gone into effect the new act prohibiting the formation of limited partnerships to do a brokerage business, or simply repealing the prior act which authorized partnerships for that purpose, would the new act or the repealing act be unconstitutional as impairing the obligation of a contract looking to the formation of a limited partnership for such a purpose?

The statement of the question answers it. The right to form a limited partnership is a privilege given by the state. It can be withdrawn at any time. Withdrawal of the privilege is not unconstitutional as impairing a contract between parties planning to avail themselves of that privilege.

That while the passage of a general law may have the incidental effect of rendering impossible of performance contracts entered into under the old law, such laws do not impair the obligations of contracts has been repeatedly held by this court. (*Louisville and Nashville R. R. Co. v. Mottley*, 219 U. S. 467, *Thornton v. Duffy*, 254 U. S. 361.)

The next clause "nor to affect any actions or proceedings begun," means, of course, actions or proceedings at law.

There is identically the same provision in the Uniform General Partnership Act (Sec. 28). The commissioners' explanatory note submitted with that provision is (7 Uniform Laws Annotated, p. 9):

"The wording is based on the American Codes. (Idaho Rev. Codes, Section 4; Cal. C. C., Section 4; Rev. Stat. of Colo. (1908), Sections 467, 468; Gen. Stat. of Kans. (1905), 1633; 1 Burns Anno. Ind. Stat. (1908), Sections 240, 241, 1356, 1359; Cobbey's Rev. Stat. Neb. 11, 363; 2 S. Dak. Comp. Laws (1908), 313, 316, 318.)"

A reference to the codes referred to clearly indicates that it is a saving clause to preserve actions or proceedings at law commenced prior to the passage of the act. The provision in the Kansas code for instance uses the expression "rights accrued or actions *pending*." The California Civil Code referred to provides:

"No action or proceeding commenced before this code takes effect and no right accrued is affected by its provisions."

The Uniform Sales Act (Sec. 76) and the Uniform Negotiable Instruments Act (Sec. 190) define the word action as used in those acts as including counterclaim and setoff.

"Proceedings" is used in apposition with action and

means the same thing, that is, legal proceedings. The phrase, "or right accrued" adds nothing.

Not only do counsel for Vette and associates not cite or rely on this provision, but their whole argument is based on the assumption that the respondents on July 2, 1917, were attempting to form a special partnership at that time and that all the rights and liabilities must be judged under that statute without reference to anything that had been done before.

In their brief counsel for Vette say (pp. 42-43):

"At the time the act of 1917 became effective Marcuse & Co. was not a limited partnership 'formed under any statute of this state prior to the adoption' of the 1917 act. The attempted limited partnership in so far as it had progressed prior to July 1, 1917, was in *process* of organization."

CORRECTION OF VARIOUS STATEMENTS IN RESPONDENTS' BRIEFS.

The Pleadings.

Counsel for respondents err as to the pleadings. They all state that the bankruptcy petition was based upon the documents afterward offered in this case and the failure to file the limited partnership articles prior to the repeal of the statute. The original bankruptcy petition filed by Giles *et al.*, on March 11, 1920, alleged that Marcuse, Morris, Finn and Hecht, co-partners doing business as Marcuse & Company, were insolvent and asked that they be adjudicated bankrupts. (Rec., 33.)

The following day Meyer and others filed an intervening petition adopting the allegations of the original petition. (Rec., 35.) On March 15th, one Lachman filed an intervening petition. This was not a petition for ad-

judication of bankruptcy, but for an order on the receiver to take possession of the assets of Finn and Hecht as well as Marcuse and Morris. This intervening petition set forth the limited partnership agreement between Marcuse, Morris, Finn and Hecht, and the failure to file the limited partnership certificate. (Rec., 42.)

Hecht and Finn answered this petition, separately, denying they were general partners and opposing the order for the receivers to take possession of their assets. (Rec., 56, 62.) They also filed separate answers to the bankruptcy petition, setting forth at length their claim that they were but limited partners, and the renunciation they had made on March 17th. (Rec., 71, 78.) Finn later filed an amendment asserting that in signing the partnership articles he and Hecht were acting also for the other respondents, and, while denying that Hecht and himself had become general partners, asserting that if they were general partners, the other respondents were equally liable. By this amendment, the Hecht-Finn agreement was for the first time pleaded. This amendment prayed for process against the other respondents and on this amended answer the subpoenas were issued by which Vette and his associates were brought into court. (Rec., 110.)

With these facts before them, the original and intervening petitioners filed, on April 30th, an amended bankruptcy petition. (Rec., 184.) This amended petition merely alleged that the ten men, Marcuse, Morris, Finn, Hecht, Vette, Zuncker, Regensteiner, Hoffman, Clement Studebaker, Jr., and George M. Studebaker, doing business under the name of Marcuse & Company, were insolvent and had committed an act of bankruptcy, and prayed that they be adjudicated bankrupts. None of the facts or documents included in the Lachman petition

or the answers thereto were set out in this petition and under this petition the petitioning creditors *could prove any facts tending* to show the respondents thereto were partners and insolvent.

Approval of the New York Stock Exchange.

Counsel for Hecht and Finn state (Brief, p. 7) that the parties were advised that the papers which they finally executed complied with the requirements of the New York Stock Exchange and were properly executed to form a limited partnership without liability on the part of anyone except the general partners. If they intend to imply the documents were submitted to the Stock Exchange authorities and they were advised by those authorities they were satisfactory, there is nothing in the record on which this statement can be based. All that the record shows is that Marcuse & Company was admitted to trading on the New York Stock Exchange. As to what, if any, papers were submitted there was not a word of testimony.

SUMMARY.

Summarizing our position: All the respondents agreed to enter into a partnership with Marcuse and Morris to conduct a brokerage business. They planned a limited partnership under the old Illinois statute permitting a limited partnership for brokerage purposes. After the negotiations had proceeded to the point of execution of the papers, it was then found impracticable to carry out this plan because of the rule of the New York Stock Exchange. To obviate this rule, the form of the papers was changed—the essential rights in every particular remaining the same. Under the new form only Hecht and Finn appeared as special partners, but

by another document incorporating the partnership articles and executed contemporaneously with the partnership articles, the other respondents were given all the rights that they had under the prior document; they made the same contributions to the capital; had the same interest in the profits; were to bear the same proportion of the losses, and had the same access to the books and the same right to cause the business to be liquidated.

They failed to perfect the limited partnership under the Illinois Act of 1874. The statutory certificate, filing of which was expressly made a condition precedent to the formation of a limited partnership under that act, was not filed until after the repeal of that act, and the partnership certificate was not true.

The organization did not become a limited partnership under the Uniform Limited Partnership Act of 1917, as that statute expressly precluded the formation thereunder of a partnership to conduct a brokerage business, and no attempt was made to comply with that act.

Nevertheless on July 2, 1917, they began operating in Chicago a brokerage business and carried on that business for almost three years. During all of that time under the laws of Illinois, that brokerage business could be conducted only as a general partnership. This is the declared statutory policy of Illinois for the protection of customers of such a business.

They intended to enter into a partnership relation. In failing to secure a statutory limitation of liability, they necessarily both at common law and under the Uniform Partnership Act became general partners.

Having become general partners in the first instance, none of them relieved themselves from liability by the renunciation under Section 11 of the Uniform Limited Act. That statute was directed only to those businesses

permitted to be conducted under its own provisions. There was no "erroneous belief." The legislature did not intend that section to be used as a device to deprive customers of a banking or brokerage house of the protection otherwise given them.

Finally the respondents could not avail themselves of that section for the documents finally executed were but a "flimsy contrivance" to conceal the relation of part of the respondents to the special partnership. It was conceived in concealment and misrepresentation and they could not have "erroneously believed" that they were limited partners.

Part of the respondents, probably having little faith in the application of that section did not even make the renunciation required by that section and none of the respondents showed full compliance therewith.

We submit that the declared Illinois statutory policy that after July 1, 1917, a banking or brokerage concern could only be conducted as a general partnership should be given full effect.

The order of the Circuit Court of Appeals should be reversed and that of the District Court confirmed.

Chicago, October, 1923.

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Attorneys for Petitioners.

Syllabus.

GILES ET AL. v. VETTE ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

No. 59. Argued October 9, 10, 1923.—Decided January 7, 1924.

1. A limited partnership could not be formed under the Illinois Limited Partnership Act of 1874, until the certificate had been filed in the office of the county clerk. P. 559.
 2. Where this was not done until the Uniform Limited Partnership Act (1917) had displaced the Act of 1874, and the plan was to conduct a brokerage business, a purpose not authorized under the later act, the attempt to form a limited partnership was abortive. *Id.*
 3. In Illinois, the question of partnership, as between the parties, is one of intention, to be gathered from the facts and circumstances. *Id.*
 4. Persons who contributed capital to a firm and received profits, but under a legally ineffectual agreement for a limited partnership and without real or apparent authority to bind the firm, and who returned the dividends with interest when it became bankrupt, held not to have become general partners under the Uniform General Partnership Act, Illinois, 1917. P. 560.
 5. Mere representation, on mistaken belief, that one is a limited partner, will not make him liable as a general partner to creditors of the firm, who were not injured thereby. General Partnership Act, *supra*, § 16. P. 561.
 6. Section 11 of the Uniform Limited Partnership Act, Illinois, providing that a person who has contributed to the capital of a business erroneously believing that he has become a limited partner shall not, by reason of his exercise of the rights of a limited partner, be deemed or held liable as a general partner, provided, on ascertaining the mistake, he promptly renounces his profits in the business, etc.,—should be construed liberally, and not restricted to cases where there were attempts to organize limited partnerships under that act. *Id.*
 7. Under the act last cited, § 6, a false statement in a limited partnership certificate, does not create liability in favor of creditors not shown to have suffered loss by reliance upon it. P. 564.
- 281 Fed. 928, affirmed.

CERTIORARI to an order or decree of the Circuit Court of Appeals modifying an order of the District Court, which adjudged the respondents here to be partners, and sent the case to the referee for findings of fact as to insolvency. The petitioners here were the creditors.

Mr. William Burry and Mr. Guy M. Peters, with whom *Mr. Julius Moses and Mr. Lewis F. Jacobson* were on the briefs, for petitioners.

Mr. George T. Buckingham, with whom *Mr. Harry P. Weber, Mr. George W. Müller, Mr. Donald Defrees and Mr. Stephen E. Hurley* were on the brief, for Vette et al., respondents.

Mr. Horace Kent Tenney, with whom *Mr. Charles F. Harding, Mr. Roger Sherman, Mr. Carl Meyer and Mr. Henry Russell Platt* were on the brief, for executors of Hecht et al., respondents.

Mr. Justice BUTLER delivered the opinion of the Court.

On March 11 and 12, 1920, creditors filed petitions in bankruptcy against Marcuse & Company, and a receiver was appointed. The bankruptcy court found that the firm was composed of Marcuse, Morris, Hecht, Finn, Vette, Zuncker, Regensteiner, Clement Studebaker, Jr. and George M. Studebaker, and sent the case to the referee, directing findings of fact as to insolvency. The case was taken to the Circuit Court of Appeals on petition to review and revise that finding and order. That court eliminated from the order the names of all except Marcuse and Morris. 281 Fed. 928. This Court granted a writ of certiorari on petition of creditors. 260 U. S. 712. The question for decision is whether any of the persons named, other than Marcuse and Morris, are liable as general partners.

Marcuse had been a member, and Morris had been an employee, of the firm of Von Frantzius & Company, brokers, at Chicago, which suspended business because of the death of Von Frantzius. In April, 1917, settlement of the estate of Von Frantzius was pending in Probate Court. Proceedings in bankruptcy were pending against Von Frantzius & Company. There were many creditors of the firm, and it was indebted in large amounts to the respondents other than Vette and Zuncker. Marcuse desired to organize a new brokerage firm to carry on business in the place formerly occupied by his old firm. It was proposed that a limited partnership be formed under the Illinois Limited Partnership Act of 1874, and to that end, a form of agreement was prepared, and nine originals were signed by Marcuse, Morris, Hecht, Finn, Vette, Zuncker, Regensteiner and Hoffman (in his own name, but in fact representing the Studebaker interest).

In advance of the consummation of this agreement, Marcuse was to arrange with creditors of the firm that the assets of the Von Frantzius estate be turned over to him, as trustee, on his giving bond and making certain payments for the protection of the administrators. He was to obtain assignments of the claims of creditors, in consideration of trust certificates issued by him containing his agreement to pay off the creditors who did not accept such certificates, to organize a new partnership, to turn over the assets to the new firm for liquidation in the usual course of its business for account of the certificate holders, and, out of profits accruing to him as a member of the new firm, to pay any deficiency remaining after liquidation of the assets. This arrangement had not been completed at the time of the signing of the partnership agreement. The signed agreements were placed in *escrow* not to be delivered until conclusion of arrangements for the delivery to Marcuse of all

the assets of Von Frantzius, excepting an amount to indemnify against claims of non-assenting creditors, and to pay the expenses of administration, and until dismissal of the bankruptcy proceedings.

The proposed agreement provided for a limited co-partnership under the name of Marcuse & Company, to commence business on April 2, 1917, and to continue for five years. Marcuse and Morris were to be general partners. The other signers were to be limited partners. Marcuse was to contribute a membership in the New York Stock Exchange, in addition to cash and other property. Morris was to contribute \$10,000. Contributions were to be made by the limited partners as follows: Hecht \$25,000, Finn \$31,500, Vette \$30,000, Zuncker \$25,000, Regensteiner \$28,500, and Hoffman (in fact the Studebaker interest) \$50,000,—amounting in all to \$190,000. The general partners were to devote all their time to the business and were permitted to draw specified sums each year to be charged to expenses. Each partner, general and limited, was to have six per cent. on capital contributed by him. Morris was to have ten per cent. of the net profits. There was to be paid to Marcuse twenty-five per cent. of the net profits, to be used by him to pay off his trust certificates covering the debts of Von Frantzius & Company. The rest was to be divided among the partners, except Morris, in the proportions in which they had contributed capital.

Shortly after the deposit *in escrow*, Marcuse learned that the New York Stock Exchange would not admit to membership a firm having more than two limited partners, but would not object to a firm having only two limited partners who were not engaged in other business. This was reported to the others, and the matter of consummating the proposed partnership agreement was dropped.

But Marcuse did not abandon the idea of organizing a new firm, and, after conferences and lapse of some time,

another limited partnership agreement for a firm of the same name was prepared conformably to the Act of 1874. Marcuse, Morris, Hecht and Finn were the parties to the new agreement. It was dated—as was the former—April 2, 1917, and was signed June 30 of that year. Marcuse and Morris were general partners and agreed to contribute capital as in the proposed former agreement. Hecht and Finn were named as limited partners, and each agreed to contribute \$95,000. The liability of each was expressly limited to the amount contributed by him. The term was five years from July 1, 1917. Rights, duties and immunities of the general and limited partners were substantially as stated in the first draft.

On the same day, and as a part of the same transaction, there was signed an instrument known as the Hecht-Finn trust agreement. The limited partnership agreement was made a part of it, and a copy was attached. It recited that Hecht and Finn would be entitled to certain payments and distributions of income and assets of the copartnership, and declared that they held the same as trustees. The agreement directed payment to the Chicago Title and Trust Company of all funds at any time payable to Hecht and Finn under the partnership agreement, or by way of distribution on dissolution. It directed the trust company to distribute all funds to the holders of certain trust certificates for 380 shares of the initial value of \$500 per share to be issued by Hecht and Finn, in accordance with the agreement, as follows: To Hecht 50 shares, Finn 63 shares, Vette 60 shares, Zuncker 50 shares, Regensteiner 57 shares, and Hoffman (for the Studebaker interest) 100 shares. Certificate holders were entitled to have access to the books, to have an inventory and account once a year, and a trial balance monthly. Hecht and Finn were to appoint such auditors as the holders of certificates should designate. On the report of the auditors and the direction of the certificate holders,

they were authorized to take steps to dissolve the firm, if the business was not conducted conservatively or was neglected or mismanaged. It was provided that the certificate holders should "have no right, title or interest, directory, proprietary or otherwise, in the said copartnership or in or to the property or assets of said copartnership . . .", and that "the interest of each . . . holder of trust certificates shall consist solely of the right to receive his proportionate share of the net part or parts of the trust fund from time to time payable to the trust company hereunder, . . ." This agreement was signed by Hecht and Finn; there was attached to it an agreement signed by Marcuse, Morris, Hecht and Finn to do all things necessary to carry out the trust, and the trust company accepted the duties imposed upon it.

On the same day—June 30, 1917—Hecht delivered his check to Marcuse & Company for \$25,000 and Finn his check for \$31,500. And checks were delivered to Hecht and Finn by Vette for \$30,000, by Zuncker for \$25,000, by Regensteiner for \$28,500, and by Hoffman (for the Studebaker interest) for \$50,000. These checks were handed over to Marcuse & Company, making up a total of \$190,000.

On Monday, July 2, the certificate of limited partnership was filed in the office of the county clerk. The new firm commenced business on that day. All the letterheads and other papers of the firm indicated that Marcuse and Morris were general partners and that Hecht and Finn were limited partners. Hecht and Finn took no part in the control of the business. Marcuse and Morris exercised exclusive control and carried on the business. The Hecht-Finn trust agreement was unknown to persons dealing with the firm. It does not appear that any of the creditors understood or had any reason to believe that the arrangement was other than as shown by the partnership agreement.

From time to time, while it was a going concern, the firm paid dividends on the capital contributed. After bankruptcy proceedings had been commenced against Marcuse & Company, Hecht and Finn, in accordance with § 11 of the Uniform Limited Partnership Act, hereafter quoted, renounced their interest in the profits of the business or other compensation by way of income. They also paid \$46,000 into court for the benefit of the alleged bankrupt estate. This amount was sufficient to cover all dividends paid on the \$190,000, so contributed to the capital of the business, with interest on such dividends from the times of payment.

Are Hecht and Finn liable as general partners?

No limited partnership was formed. On July 1, 1917, the Illinois Limited Partnership Act of 1874 was repealed, and there was substituted for it the Uniform Limited Partnership Act (Hurd's Revised Statutes, 1919, c. 106a, §§ 45-75). The Uniform (General) Partnership Act (*id.* §§ 1-45) became effective on the same day. The Act of 1874 provided that no limited partnership should be deemed to have been formed until the certificate should be filed in the office of the county clerk. The first effort to form a limited partnership was given up. The final effort failed because the certificate was not filed until after the repeal of the Act of 1874. Limited partnerships organized under the Act of 1917 are not authorized to do a brokerage business, and no attempt was made to organize under it.

Hecht and Finn were not partners as to Marcuse and Morris. It is well settled in Illinois that, as between the parties, the question of partnership is one of intention to be gathered from the facts and circumstances. *Goacher v. Bates*, 280 Ill. 372, 376; *National Surety Co. v. Townsend Brick Co.*, 176 Ill. 156, 161; *Grinton v. Strong*, 148 Ill. 587, 596; *Lycoming Insurance Co. v. Barringer*, 73 Ill. 230, 233, 234; *Smith v. Knight*, 71 Ill.

148, 150. See also *London Assurance Co. v. Drennen*, 116 U. S. 461, 472. The Uniform (General) Partnership Act provides: "A partnership is an association of two or more persons to carry on as co-owners a business for profit." Section 6 (1). ". . . persons who are not partners as to each other are not partners as to third persons." Section 7 (1). ". . . common property or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property." Section 7 (2). "The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business . . ." Section 7 (4).

Hecht and Finn did not carry on the business of the firm as co-owners or otherwise. They had no authority, actual or apparent, to act for or bind the copartnership. The agreements of the parties, their subsequent conduct, the repayment of dividends received with interest, together with the other facts and circumstances above alluded to, are more than sufficient to rebut and overcome any inference legitimately resulting from the receipt of a share of the profits. The provisions of the agreement giving respondents right to have access to the books of the firm, to have statements, to appoint auditors and, in the event specified, to call for a dissolution, were appropriate in a limited partnership. See § 19, Act of 1874; § 10, Uniform Limited Partnership Act. Under the circumstances, these provisions do not indicate any intent on the part of Hecht and Finn to become general partners or support petitioners' contention that they are liable as partners.

As to third parties, they cannot be held liable as general partners.

Section 16 of the Uniform (General) Partnership Act provides that: "When a person . . . represents himself, or consents to another representing him to any one,

as a partner in an existing partnership . . . , he is liable to any such person . . . who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable . . . " There was no such representation of Hecht or Finn to any person or to the public. On the contrary, they were published to the world as limited partners. It is true that they were not. But no person could have been misled to his disadvantage by the statement that they were. Representation on mistaken belief that they were limited partners was not a holding out as general partners. The lack of power of a limited partnership created under the later act to carry on a brokerage business gives no additional significance to the representations. The firm was not held out as having been organized under that act. The failure to complete the organization did not injure any persons dealing with the firm. Creditors are as well off as if the limited partnership had been perfected. The \$190,000 handed over by Hecht and Finn was not withdrawn. Hecht and Finn did not intend or agree to become general partners. The things intended and done do not constitute a partnership. They did nothing to estop them from denying liability as such. The case is not doubtful. But if it were, their intent should be followed. *Beecher v. Bush*, 45 Mich. 188, 193. See also *Post v. Kimberly*, 9 Johns. 470, 502, *et seq.* To hold them liable as general partners would give creditors what they are not entitled to have, and would impose on Hecht and Finn burdens that are not theirs to bear.

Moreover, we think that § 11 of the Uniform Limited Partnership Act was applicable and was properly invoked by Hecht and Finn. It provides:

"A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights

of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income."

Prior to the taking effect of that act, the courts of Illinois held that at common law all partners were liable without limitation for the debts of the firm, and that, in order to limit such liability, the statute authorizing limited partnerships must be complied with, or all those who associated under it would be liable as general partners. *Henkel v. Heyman*, 91 Ill. 96, 101; *Manhattan Brass Co. v. Allin*, 35 Ill. App. 336, 341; *Walker v. Wood*, 69 Ill. App. 542, 549, affirmed 170 Ill. 463; *Cummings v. Hayes*, 100 Ill. App. 347, 353. And this is in harmony with decisions elsewhere under statutes similar to the Illinois Act of 1874.¹ These cases illustrate how strictly the common law rule against limitation of liability was applied, and how far the doctrine of constructive partnership was carried. It was thought that the strictness of the old act and decisions under it impaired the usefulness of limited partnerships as business organizations because of the risk that one contributing capital as a limited partner might be held liable without limitation.² The Uniform Limited

¹*Pierce v. Bryant*, 5 Allen, 91, 94; *Haggerty v. Foster*, 103 Mass. 17; *Argall v. Smith*, 3 Denio, 435, affirming 6 Hill, 479, 481; *Durant v. Abendroth*, 69 N. Y. 148, 152; *In re Merrill*, 12 Blatchf. (U. S.) 221, 223; *Richardson v. Hogg*, 38 Pa. St. 153; *Vanhorn v. Corcoran*, 127 Pa. St. 255, 268; *In re Allen*, 41 Minn. 430; *Lineweaver v. Slagle*, 64 Md. 465, 483; *Holliday v. Union Bag and Paper Co.*, 3 Colo. 342, 344; *Oglesby Co. v. Lindsey*, 112 Va. 767, 776.

²See explanatory note as to the Uniform Limited Partnership Act, submitted with the act to the Illinois legislature.

The Uniform Limited Partnership Act has been adopted by Alaska, Illinois, Maryland, Pennsylvania, Tennessee, Virginia, Idaho, Iowa, Minnesota, New Jersey, Utah and Wisconsin. See Terry, *Uniform State Laws, Annotated*.

Partnership Act and the Uniform (General) Partnership Act, passed at the same time, relax the strictness of the rules against limitation of liability. Each provides that the rule that statutes in derogation of the common law are to be strictly construed shall have no application to it, and that the act shall be so interpreted and construed as to effect the general purpose to make uniform the laws of those States which adopt it. See § 28, Uniform Limited Partnership Act; § 4, Uniform (General) Partnership Act.

Hecht and Finn contributed to the capital of the business, and each erroneously believed that he had become a limited partner in a limited partnership. Neither took any part in the control of the business or exercised any rights or powers in respect of it other than those which might belong to one not a general partner. See § 19, Act of 1874; § 10, Uniform Limited Partnership Act. They made the renunciation provided for. No person suffered any loss or disadvantage because it was not made earlier, or because of reliance on any statement in the certificate. All dividends paid on the \$190,000 were returned. It need not be decided whether such return was necessary.

Section 11 is broad and highly remedial. The existence of a partnership—limited or general—is not essential in order that it shall apply. The language is comprehensive and covers all cases where one has contributed to the capital of a business conducted by a partnership or person erroneously believing that he is a limited partner. It ought to be construed liberally, and with appropriate regard for the legislative purpose to relieve from the strictness of the earlier statutes and decisions. See *Logan v. Davis*, 233 U. S. 613, 627, 628; *United States v. Colorado Anthracite Co.*, 225 U. S. 219, 223; *United States v. Southern Pacific R. R. Co.*, 184 U. S. 49, 56. Its application should not be restricted to cases where there was an attempt to organize a limited partnership under that act.

The petitioners assert that § 11 does not apply because the limited partnership certificate filed July 2, 1917, was false in that it did not disclose the names of all the limited partners or the amount of the contributions of each. Their contention is that the other respondents were represented by Hecht and Finn, and that all should have been named in the certificate as limited partners, and that the amount advanced by each of the respondents should have been stated as his contribution to the capital. But the Act of 1874 was repealed and the Uniform Limited Partnership Act was substituted for it before the certificate was filed and before the firm commenced business. Section 8 of the Act of 1874 provides that "if any false statement shall be made in such certificate . . . all the persons interested . . . shall be liable . . . as general partners." The later act is very different. It provides (§ 6): "If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false." We do not find that the certificate was false within the meaning of § 8. But even if it was inaccurate or false as asserted, liability of Hecht and Finn or the other respondents as general partners does not follow, because the Act of 1874 was superseded, and because it is not shown that any creditors suffered loss by reliance upon any statement in the certificate.

It must be held that Hecht and Finn are not liable as general partners.

Petitioners contend that the respondents other than Hecht and Finn are liable as general partners. They argue that in the attempt to form the limited partnership under the agreement signed June 30, Hecht and Finn were acting as the representatives of the other respondents; that the earlier agreement signed by all and placed in escrow was not abandoned, and that the limited partnership agreement and the Hecht-Finn trust agreement

signed June 30 were calculated and intended to circumvent the rule of the New York Stock Exchange above referred to, without altering the substance of the plan of organization evidenced by the first agreement. But from the conclusion that Hecht and Finn are not liable as general partners, it necessarily follows that the other respondents cannot be held liable as such.

The decree of the Circuit Court of Appeals is

Affirmed.